The Code of Maimonides

BOOK FOUR

THE BOOK OF WOMEN

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THE CODE OF MAIMONIDES

(*MISHNEH TORAH*)

BOOK FOUR

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IN MEMORY OF
MAX M. YELLEN
PUBLIC BENEFACTOR
PATRON OF JEWISH EDUCATION
MAN OF AFFAIRS
DEVOTED FRIEND

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EDITOR'S NOTE

James Tinkham Babb, Yale Librarian Emeritus, died on July 21, 1968. He was one of the chief planners of the Yale Judaica Series, jointly with the late Louis M. Rabinowitz, its original sponsor.

Subsequently, for more than twenty years, he served as a member of the Administrative Committee of the Series, and his active support and wise counsel proved invaluable throughout.

This volume of the Series is the first to appear after his death. May it serve as a small tribute to his memory.

L.N.

Philadelphia
July 21, 1970

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INTRODUCTION

The fourth book of Maimonides' Code is entitled *Sefer Našim*, "Book of Women," and its subject matter corresponds to what is called today family law. In choosing this term, Maimonides followed the Mishnah, where the title *Našim* is applied to the Order which deals with family law.

The Book of Women is divided into the following five treatises:

1. Laws Concerning Marriage
2. Laws Concerning Divorce
3. Laws Concerning Levirate Marriage and Ḥălişah
4. Laws Concerning the Virgin Maiden
5. Laws Concerning the Wayward Woman

While Maimonides generally followed the Mishnah as far as the subject matter was concerned, he did not follow the sequence in which the material is arranged in the corresponding Order of the Mishnah, and omitted completely two subjects treated in it. In the Mishnah, the sequence of the material is as follows:

Levirate Marriage and Ḥăliṣah
Kĕṯubbah
The Wayward Woman
Divorce
Marriage

The Mishnah seems to have used a purely mechanical rule for its sequence, whereby the tractates in each Order are arranged according to their length, the longest being first. Maimonides adopted instead a logical sequence reflecting the usual situation in life. Accordingly, marriage comes first, followed by divorce, the reverse of the sequence in the Mishnah. Thereafter Maimonides sets forth the laws that apply if the husband dies first, i.e., those governing levirate marriage and ḥălişah.

Seduction, rape, and waywardness (infidelity) are deviations

that are not normal, but they do happen and the law must deal with them; they are discussed next. The Laws Concerning the Wayward Woman were left for the last, presumably because they are no longer in force.

Unlike other codifiers, Maimonides included in his Code laws that are no longer applicable, such as those requiring the ordeal by the water of bitterness for the wife suspected of infidelity. The usual reason suggested for this inclusion is that he wanted to make his Code so complete that one would need no other book for further information on any law whatsoever. Another explanation, which appears to be rather farfetched, is that Maimonides expected the imminent redemption of Israel, and planned that his Code should serve as the constitution of the redeemed nation. Hence his inclusion of such laws as would be applicable only upon the re-establishment of the Jewish State.[1]

It is also to be noted that Maimonides omitted from the Book of Women the Laws Concerning Vows and the Laws Concerning the Nazirite, although these are included in the respective Order of the Mishnah. The Mishnah included the Laws Concerning Vows because they touch family law, since a husband has the right to annul his wife's vows if he disapproves of them, and the Laws Concerning the Nazirite, because of their close association with vows. Maimonides, on the other hand, followed the more logical procedure of treating the subject of vows separately and in its entirety, and determining its place in the Code accordingly. Hence their exclusion from the Book dealing with family law and their inclusion in the Book of Asseveration.

Maimonides follows the same clear and logical sequence also within the treatises themselves. Thus the treatise on marriage contains both the law of betrothal and the law of nuptials, chapters I–X dealing with the former, and chapters XI–XXV with the latter.

Marriage may be dissolved through divorce or through the death of one of the parties. The Laws Concerning Divorce treat of divorce first, in chapters I–XI, because this is the main sub-

1. S. Zeitlin, *Maimonides* (New York, 1935), pp. 83 ff.

ject of the treatise; widowhood, which belongs here merely by association, is treated last, in chapters XII and XIII.

When marriage is dissolved through the death of the husband, the laws of levirate marriage and ḥălişah apply only if no children had resulted from that marriage. Hence these laws come immediately after the chapters dealing with widowhood.

So far Maimonides has dealt with relationships that are licit. The next two treatises deal with relationships that are illicit, namely seduction, rape, and infidelity. And since infidelity entails the ordeal by the water of bitterness, a practice discontinued some time before the destruction of Jerusalem (Soṭ 9:9), it comes last and concludes the Book of Women.

DEVELOPMENT OF THE LAW

The Book of Women, like all the other books of the Code, represents the norm set down in the Talmud, augmented by the subsequent legal developments up to Maimonides' own time. There was, however, one major post-Talmudic development known as the ban of R. Gershom, which will be discussed later on, as well as some other changes that had to do with the stipulations inserted in the kĕṯubbah, all of which are not mentioned in the Code.

Talmudic law itself represents a continuous development of the status of woman from that of a virtual chattel of her father or brother to that of a free person practically on a par with the adult male. In accordance with Scriptural law, marriage was a civil contract, but one of its preliminary stages, the betrothal, was significantly named "consecration" (*ḳiddušin*), in which the free consent of both parties became an essential requirement.

Behind this development there was the assumption that marriage was the normal, indeed the optimum, state of every individual. While celibacy became the ideal state in Christian tradition, Jewish tradition continued to require marriage of the male and to expect it of the female. This was based on the Scriptural assertions that *it is not good that the man should be*

alone (Gen. 2:18), and that *therefore shall a man leave his father and his mother, and shall cleave unto his wife, and they shall be one flesh* (Gen. 2:24). The Christian ideal, on the other hand, found expression in Paul's well-known declaration, *If they cannot contain, let them marry; for it is better to marry than to burn* (1 Cor. 7:9); marriage was thus presented as a concession to human weakness, while celibacy remained the ideal.

The purpose of marriage was both procreation, in accordance with the Biblical command *Be fruitful, and multiply* (Gen. 1:28), and companionship, as indicated in the above quoted verse *It is not good that the man should be alone*. The Rabbis of the Talmud held varying views as to when a man may be regarded as having discharged his duty to multiply. Some thought when he had at least two male children, others were more lenient and considered one male and one female child sufficient (Yeḇ 6:6). The Rabbis praised the married individual, calling him blessed, and condemned him who remained unmarried (B. Yeḇ 62b ff.).

ELIGIBILITY FOR MARRIAGE

No minimum age for marriage was stipulated, but the Sages strongly disapproved of, though they could not forbid, child marriage. This gave rise to the institution of "refusal" (*mi'un*), whereby an orphaned minor girl given in marriage by her mother or her brother could, upon coming of age, summarily terminate this marriage without formal divorce proceedings, by merely declaring her refusal to continue living with her husband, and his consent to this separation was not necessary. This institution, though never formally abolished, gradually became obsolete, for the simple reason that child marriage went completely out of fashion.[2] An indirect end to refusal was put by the Chief Rabbinate of the State of Israel in 1950, when it declared the minimum legal age for marriage to be sixteen,

2. See, however, P. Dykan, *Dine niśu'in u-gerušin* (Tel Aviv, 1956), p. 202.

for both the Sephardi (Eastern) and the Ashkenazi (Western) communities.[3]

Ineligibility for marriage because of consanguinity was already decreed in the Bible (Lev. 18:6–18), and the relatives listed there were called forbidden relatives of the first degree. The Sages of the Talmud augmented this group by a few more called forbidden relatives of the second degree. These incestual interdicts are all acceptable to the modern mind. There are also a few other prohibitions that may seem unreasonable at present, although they were very much in line at the time as necessary restrictions to strengthen public morality. One of them is the Scriptural prohibition of remarrying one's divorced wife if in the interim she had been married to another man (Deut. 24:1–4). Another was the rule that an adulterous wife may not be retained by her husband even if he is willing to overlook her misconduct, nor is she permitted to marry her paramour after her divorce.

A similar concern for public welfare inspired legislation aimed at assuring clear paternity for a child born to a divorced or widowed mother, who was accordingly forbidden to remarry for a definite period of time, sufficient to determine whether she was or was not pregnant at the moment of divorce or bereavement. A lapse of ninety days was therefore required from the date of the husband's death or of the divorce until remarriage.[4]

While the Sages were strict in some areas, they were lenient in others, where a *fait accompli* was accepted, even though the act involved was not legal, in order to avoid grievous hurt to the parties concerned.[5]

POLYGAMY

According to Biblical and Talmudic law, polygamy is lawful, but early in the eleventh century a synod convoked by R. Ger-

3. Ibid., p. 205; B. Z. Schereschewsky, *Dine mišpaḥah* (Jerusalem, 1958), p. 398.

4. See below, III, xi, 18.

5. See below, III, x, 14; xii, 8; xiii, 3.

shom ben Judah, styled "Light of the Exile," issued an interdict against it, which thereafter became known as "the ban of R. Gershom." The same synod decreed also that the wife's consent was necessary before a court could sanction divorce, thus severely limiting the husband's freedom to dismiss his wife.[6] R. Gershom's ban remained, however, limited in effect, inasmuch as it was not acknowledged by the Jewish communities in the Moslem countries of the East. These communities continued to consider plural marriages lawful, until the recent act of the Chief Rabbinate of Israel extended the ban, formerly effective only in the Ashkenazi communities of Europe and America, to the Sephardi communities in the Near East as well.[7]

The fact is, however, that polygamy, even when legitimate, was never prevalent among Jews. Even in ancient times, "it is clear . . . that the most common form of marriage in Israel was monogamy. It is noteworthy that the Books of Samuel and Kings, which cover the entire period of the monarchy, do not record a single case of bigamy among commoners (except that of Samuel's father, at the very beginning of the period). The Wisdom Books, too, which provide a picture of society in their age, never mention polygamy." [8]

In later times, too, polygamy, while still lawful, was strongly disapproved of, and the kĕṯubbah was often employed as a means to prevent it. Examples of such writs are known, including a clause stating that the husband obligates himself to take no additional wives, and later authorities list this clause among the common stipulations in the kĕṯubbah.[9]

THE KĔṮUBBAH

"There are three interested parties to a marriage contract, the husband, the wife, and the State. In modern days, the State's

6. Z. W. Falk, *Jewish Matrimonial Law in the Middle Ages* (London, 1966), pp. 13 f.; Schereschewsky, pp. 67 ff.

7. Schereschewsky, p. 75.

8. Roland de Vaux, *Ancient Israel* (New York, 1961), p. 25.

9. L. M. Epstein, *The Jewish Marriage Contract* (New York, 1927), p. 272; Falk, p. 12.

interest is so paramount that it completely overshadows the other two . . . Modern marriages, therefore, have no need and practically no room for a marriage deed, or a written marriage contract." [10]

In ancient days marriage was entirely a private contract between two parties. The participation of the State was minimal, and its function was merely to see that the contractual obligations between the two parties were faithfully kept. The kĕṯubbah, literally "written instrument," sets down the terms of the marriage contract, and its importance is attested by the fact that an entire tractate of the Talmud is devoted to it.

The kĕṯubbah, like the Common Law dower, represented a lien upon all real estate (later also upon all movables) owned by the husband during his lifetime, and if at his death or when he divorced his wife he possessed no such estate, this lien could be collected out of any real property formerly owned by him and now in the possession of a third party.[11] This rule acted as a restraint upon the husband, who theoretically had the initiative in divorce, for should he decide to dismiss his wife, she could collect out of his property the full amount specified in the document, and often this amount was purposely made so large that the husband could not but think twice before deciding to terminate the marriage. The kĕṯubbah provided protection for the wife also in case of widowhood, when she could likewise collect from her husband's estate the full amount stipulated in the document.

The minimum amount allowed by law was two hundred zuz for a virgin, and one hundred for a nonvirgin, which in Talmudic times were sizable sums. This was called "statutory kĕṯubbah" (*'iḳḳar kĕṯubbah*). It could be augmented by a voluntary addition on the part of the husband, called "supplementary amount" (*tosefeṯ kĕṯubbah*), and by property brought in by the wife as her own dowry.

While the kĕṯubbah is still used in marriages, its importance

10. Epstein, p. 1.
11. D. W. Amram, *The Jewish Law of Divorce* (New York, 1968), p. 113.

has diminished, because in modern secular law marriage is a public institution regulated by social legislation, rather than a private contract, so that as far as Jewish law is concerned, the bond of matrimony has now become a religious ritual rather than a contractual agreement.

DIVORCE

Scripture permits divorce,[12] but assumes that the husband would usually dismiss his wife only if he finds something "unseemly" in her. The Sages of the Mishnah disagreed about the precise meaning of the term "unseemly." According to the School of Shammai, unseemliness means adultery; according to the School of Hillel, any reason which makes the two parties incompatible is valid ground for divorce.[13] The early Church adopted the view of the School of Shammai, while Jewish law preferred to follow the opinion of the School of Hillel.

We have already seen that even when the husband had the right to divorce his wife without her consent—that is, before R. Gershom and his synod decreed that her consent was necessary—the kĕṯubbah served as a deterrent, in that it made divorce too expensive to be indulged in lightly. The elaborate rules governing the writing, attestation, and delivery of the bill of divorcement (*geṭ*), also contributed their share towards discouraging hasty and ill-considered divorce.

Although it was the husband who issued the geṭ, the wife, on her part, could petition the court for divorce, and if she showed valid cause, the court was empowered to compel the husband to divorce her.

Since mutual consent, free from fraudulent conspiracy, was regarded as sufficient cause for action, no public opprobrium was attached to divorce, so long as no moral turpitude was involved in it, and the only resulting disability was that a divorcée could not, in accordance with Scriptural law,[14] marry a member of a priestly family.

12. Deut. 24:1–4. 13. Giṭ 9:10. 14. Lev. 21:7.

LEVIRATE MARRIAGE

The flexibility of Rabbinic law is reflected also in the rules concerning levirate marriage, that is, the Scriptural commandment,[15] requiring, but not compelling, a man to marry his deceased brother's widow, if that marriage remained childless. If the surviving brother chose not to marry his sister-in-law, he was required to submit to the rather humiliating ceremony of ḥălişah,[16] whereupon the widow was free to marry any other man. The Mishnah, however, notes that "beforetime the duty of levirate marriage came before the duty of ḥălişah, when they acted intent on fulfilling a religious duty; but now, when they act, but not intent on fulfilling a religious duty, the Sages have enjoined that the duty of ḥălişah comes before the duty of levirate marriage" (Beḳ 1:7). Abba Saul, a Sage of the second century C. E., went even further and declared that levirate marriage performed not with the intent of fulfilling a religious duty but with some ulterior motive, is comparable to incest.[17]

The opinion of Abba Saul was readily acceptable in communities where polygamy was not customary, and it accordingly became the norm in Western Ashkenazi communities.[18] In Eastern Sephardic communities the choice between levirate marriage and ḥălişah remained open up to 1950, when the Chief Rabbinate of Israel made ḥălişah mandatory for both Ashkenazi and Sephardi communities.[19]

THE ʿĂĠUNAH

The Jewish law of marriage and divorce, which is generally just, fair, and adequate even from the most modern point of view, has a serious weakness in the case of the *ʿăġunah,* the "tied woman."

We have already seen that in divorce it is the husband who

15. Deut. 25:5.
16. *Ibid.* 25:9–10.
17. B. Yeḇ 39b.
18. ŠEE 165:1; ṬEE 165.
19. Dykan, p. 153; Schereschewsky, p. 213.

must initiate the action, and if he refuses, he may, for lawful cause, be compelled by the court to do so. In the State of Israel, where the Rabbinic courts are governmental agencies, such a judicial decision can be enforced by the appropriate administrative authorities. In the Dispersion, in medieval and early modern times, when the Jewish communities were usually compact, self-contained, and self-governing groups, such a decision could also be carried out in most cases. In more recent times, however, when the Jewish community in the Dispersion became a completely voluntary association deprived of any effective coercive power, the only recourse available to Rabbinic courts is persuasion. If that fails, and the husband persists in refusing to issue a get, his wife, if she wishes to abide by Jewish law, must remain tied to him even if she has already obtained a civil divorce from the State, and may not remarry. She thus becomes an 'ăgūnah.

Another type of 'ăgūnah is a wife whose husband is thought to be dead, but no clear proof of his death is available, or has disappeared, and his whereabouts are unknown. The insecurity of Jewish existence in the Dispersion, and the enforced absences of the husband in search of livelihood, made such instances not as rare as they might have been otherwise. Since there is no Enoch Arden provision in Jewish law, the Rabbis tried to use every available means of pressure upon husbands who have deserted, and relaxed the requirements of the law in the case of husbands whose death cannot be attested by the statutory two competent male witnesses—one witness was declared sufficient in such a case, even if that witness is a relative, a woman, a slave, or a heathen, and his testimony was accepted as decisive in terminating the marriage and setting the wife free to marry any other man.

Nevertheless, all these attempted remedies have proved to be inadequate, and a number of further proposals have been made to alleviate the situation. In the case of divorce, it was suggested that the court might appoint an agent to act in behalf of the husband who refuses to comply with the court's order to issue

a get, or that a clause might be inserted in the kĕṯubbah requiring the husband to comply with such an order. The most recent suggestion is to provide for annulment of the marriage by inserting a corresponding stipulation in the kĕṯubbah.[20] While, however, such an annulment is sanctioned in the Talmud, later authorities, beginning with the fourteenth century, refused to use it, and there is still great resistance to such a solution of the problem.[21]

PROTECTION OF CHILDREN

In Roman law the father had supreme authority in the family. *Patria potestas* extended even to the father having the power of life and death over his children and the right to sell them into slavery.[22] Jewish law, on the other hand, protected from the very beginning the rights of the children not only vis-à-vis society but also vis-à-vis their own parents. Thus the rebellious son had to be brought before the elders of the city for judgment, and only they could declare him liable to punishment, not the parents.[23]

Following this tradition, Rabbinic law has many enactments for the protection of the child.

To begin with, there were the aforementioned laws governing the paternity of the child. This was important, because the true father was responsible for the child's maintenance, and the child became the heir of his true father. The law, therefore, ruled that a divorcée or a widow must wait ninety days between divorce or widowhood and remarriage.[24]

20. E. Berkovits, *Tĕnay bĕ-niśu'in ubbĕ-get* (Jerusalem, 5727/1967); L. M. Epstein, *Haṣṣa'ah lĕ-ma'an taḳḳanaṯ 'ăgunoṯ* (New York, 5690/1930); *Proceedings of the Rabbinical Assembly of America,* 1968, pp. 229–41.

21. *Noam, a Forum for the Clarification of Contemporary Halaḳhic Problems, Published by Torah Shelemah Institute, 12* (Jerusalem, 1969), pp. 338–53; *Lĕ-dor 'aḥăron, a Protest Issued by the Union of Orthodox Rabbis of the United States and Canada* (Brooklyn, 1937).

22. *Institutes of Gaius,* I, 55 (Poste edition, p. 37). See also W. W. Buckland, *The Main Institutes of Roman Law* (Cambridge, 1931), p. 57, and F. Schultz, *Classical Roman Law* (Oxford, 1961), pp. 142 ff.

23. Deut. 21:18–21.

24. Yeḇ 4:10.

There were also laws to protect the unborn child (*nasciturus*) and the nursing infant. A man was not allowed to marry a divorcée or a widow who was pregnant or nursing. In the case of the pregnant woman the objection is that the fetus might be hurt by sexual intercourse. The child's real father, it is assumed, would not do anything to injure him. There can be no such assumption, however, concerning the second husband, who is a stranger to the expected child, and would have no concern for his welfare. In the case of the nursing mother, the true father would make sure that her milk remained wholesome, whereas the stepfather might not go to the trouble of providing the necessary medicaments to restore her milk, spoiled by intercourse, to its original wholesomeness. This lactation period, during which marriage was forbidden, lasted for twenty-four months.[25]

A law that is taken for granted today but was not so in ancient times is the one which obligates the parents to provide for the maintenance of the children, both legitimate and illegitimate. The rule was that the father was legally obligated to maintain his children up to the age of six. After that age, and until they reached adulthood, he was only morally bound to provide for their maintenance.[26] In the father's absence, the court had the right to sell some of his possessions in order to provide for the maintenance of his children.[27]

Inheritance posed a special problem, since legally only the male children were heirs. The law therefore sought to protect the rights of the daughters, by providing that a clause might be inserted in the kĕṯubbah stating that in case of the father's death, the daughters were to receive their maintenance out of his estate until their espousal or until they came of age.[28] In addition the father was obligated to marry off his daughter in a decent manner, that is, provide her with both a dowry and a trousseau, so that she might clothe and adorn herself properly.[29] In the case of a woman who is married for the second time

25. B. Yeḇ 42a; Keṯ 60a f.
26. B. Keṯ 65b, 49b.
27. See below, I, xii, 17.
28. Keṯ 4:11.
29. B. Keṯ 52b, 68a.

and has children by her first husband, their rights as heirs were likewise protected by a special clause in the kĕṯubbah.[30]

Child marriages, as mentioned before, were severely frowned upon.[31] If a male child contracted marriage, it was completely ineffective,[32] and if a female orphan was given in marriage, she could later terminate it by the mere declaration of refusal and without a geṭ.[33] A sad comment on this law is found in Tosafoṯ to B. Ḳid 41a, *s.v. 'asur:* "But now it is our custom to betroth our daughters even while they are still in their minority, for the Exile presses harder upon us daily, and though a man is able to provide a dowry for his daughter now, he may not be able to do so later on, so that she will remain unmarried (*'ăḡunah*) forever." Here, too, we see how the law adapted itself to the reality of social conditions.

When the parents are legally separated, who is to take care of the children? The obligation of maintenance was always the father's,[34] which was logical, since in premodern days the father was the only one who earned a living. The question of the child's custody was decided by only one factor, the welfare of the child. Hence up to the age of six the children remained with the mother. Thereafter the male children reverted to the custody of the father, since it was his obligation—not the state's, as today—to provide for their education, and he had to see to it also that they received moral training and were taught a trade. The daughters, on the other hand, remained with their mother.[35]

PROTECTION OF ORPHANS

In Jewish law orphans were treated with particular solicitude. Their property was sold by the court only in exceptional cases,[36] and their creditors could collect only if their claims were certified by the court. They were not taxed for charity.[37] To make sure that their rights were fully protected, the court usually

30. Keṯ 4:10.
31. B. Ḳid 41a.
32. Ḳid 2:6.
33. B. Ḳid 41a; Yeḇ 13:1.
34. B. Keṯ 65b.
35. B. Keṯ 102b, 29a.
36. B. BB 22b.
37. B. BB 8a.

appointed a guardian over them, and this appointment was circumscribed by numerous restrictions intended to safeguard the welfare of the orphans.[38]

SOME AMBIGUOUS TERMS

In addition to the usual problems encountered in any translation, there is in this translation the difficulty of having to use terms that are outwardly identical or equivalent, but in fact have different connotations in each of the two languages, with the consequent danger that the reader may be misled.

Thus the Hebrew term *ḳohen* has been conventionally translated as "priest," which is outwardly correct but actually misleading. We ordinarily associate the term "priest" with a person ordained to the service of a religious institution, such as a church or a shrine. The Hebrew *ḳohen,* on the other hand, refers to a descendant in the male line of Aaron, the brother of Moses, whose privileges and obligations are set forth in the Book of Leviticus, chapters 21 and 22.

In Biblical times he was eligible to minister at the Temple in Jerusalem. After the destruction of the Temple, he retained his obligations and privileges *in potentia,* with the assumption that after the eventual rebuilding of the Temple they will be restored. But even *in potentia* the kohen retained his special sanctity which entailed both privileges and restrictions. In the Book of Holiness[39] this sanctity found expression in the ordinance forbidding him to marry a divorcée.

Similarly, a Levite is more than just a member of the Tribe of Levi, for this membership entitled him to a certain status and to some privileges. An Israelite, too, is not just a member of the people of Israel, in contradistinction to a Gentile, but also a commoner who is neither a priest nor a Levite.

Certain legal terms also offer some difficulty in translation. For example, *šĕḇu'aṯ heseṯ*, translated "informal oath" (literally

38. E. E. Scheftelowitz, *Mišpaṭ ham-mišpaḥah* (Tel Aviv, 1941), pp. 77 ff.
39. V, 1, xvii, 1–2; YJS, *16,* 108.

"oath of persuasion"), makes us pause, because neither rendering really tells the true story. There are very definite regulations in Scripture and in the Talmud governing oaths, inspired by a general reluctance to subject people to them, lest this should lead to desecration of the Holy Name. And yet the Rabbis felt that under certain circumstances an oath may persuade (hence "oath of persuasion") a person to tell the truth, may effect a little tilt, as it were, to balance the scales of justice. The Rabbis consequently overcame to some extent their reluctance to administer the oath, whenever they thought it might help the cause of justice, but were careful to prescribe an informal procedure (hence "informal oath") for it, and ruled that the litigant taking this type of oath need not follow the awesome procedure of holding a Scroll of the Torah while swearing, prescribed for formal oaths.

Similarly, the term *makkaṯ marduṯ,* translated "flogging for disobedience," is not really clear. The term refers to a Rabbinic enactment that was contrary to the accepted norm. The law, based on Scripture, is perfectly definite about judicial flogging, which is limited to no more than thirty-nine lashes and to certain types of transgressions. With their customary common sense, the Sages of the Talmud felt that corporal punishment should be extended to cases where, though not scripturally prescribed, it is in the judgment of the court advisable and necessary, and that the number of lashes should also be left to the court's discretion. It is such nonstatutory flogging that was called *makkaṯ marduṯ.*

The term *hăna'ah,* translated as "benefit" or "enjoyment," might be taken to refer to enjoyment or benefit derived from the *direct* use of an article. In our context, however, it refers rather to enjoyment or benefit derived solely from the *indirect* use of it. For example, the direct use of food is the consumption of it, whereas to derive hăna'ah from it, one must sell it, or give it to a beneficiary who would consider the act a favor, or feed it to one's animal, or use it for some similar purpose other than eating.

Another source of confusion lies in the terms *'erusin, ḳiddušin,* and *nišu'in,* which are here translated, respectively, "espousal," "betrothal," and "nuptials." The confusion stems from the difference between the marriage customs of today and those of Talmudic and Gaonic times. The present custom, which is a composite of two acts formerly performed separately, dates back to the eleventh century. In Talmudic and Gaonic times, however, there was a distinction between espousal, or betrothal, and nuptials, and usually there was a year's interval between the two.

The espousal is in some respects similar to, but not at all identical with, the modern engagement, and signified a definite undertaking on both sides to bring about an eventual marital union. It was formalized by the betrothal, which theoretically made the couple husband and wife, so that if thereafter they wished to separate, they required a formal divorce (geṭ).

The nuptials were effected by the conveyance of the bride to the groom's home and the subsequent consummation of the union, which concluded the statutory requirements for a lawful marriage. Prior to this final step, the couple did not live together and the groom was not yet obligated to maintain the bride.

Today these two steps are taken simultaneously, the *ḥuppah,* or wedding canopy, symbolizing the couple's home, so that espousal, betrothal, and nuptials take place simultaneously.

In English the terms betrothal and espousal are practically synonymous. In Hebrew they are not, but in legal usage they refer, for all practical purposes, to the same act,[40] although one might say that espousal signifies the status, while betrothal signifies the instrument which brings it into existence.

SOME CURIOUS POINTS

Two rather curious points are especially worthy of attention. One provides evidence of the painstaking and critical insight

40. Schereschewsky, p. 32; Scheftelowitz, p. 36.

with which Maimonides treated his sources; the other represents an instance where even a mind as great as Maimonides' found it necessary to yield to the mores of his environment.

It is generally assumed that textual criticism is a modern discovery, and that the use of ancient manuscripts to determine the correct reading of a passage in a text is a recent addition to the working tools of the scholar. Maimonides, however, was a pioneer in this field, too, and in many places of his Code he explains that his decision on a point of law, though differing from that of other authorities, is based on a comparative critical study of the relevant text. Thus in one Section of the Book of Women (I, xi, 13) he says: "These authorities had an error in their copies of [the Talmud]. I have . . . examined many ancient copies of [it] and found the matter to be as we have stated it."

The second point involves the following rather amazing statement (I, xxi, 10): "A wife who refuses to perform any kind of work that she is obligated to do, may be compelled to perform it, even by scourging her with a rod."

Coming from Maimonides, whose ethical standards were uncommonly high, such a rule is, to say the least, surprising. Evidently in this case he found it advisable to yield to the prevailing mores of the Moslem society in the midst of which he lived.[41] His contemporaries, however, though far less brilliant, reflected Jewish tradition more faithfully in this case. Thus Abraham ben David of Posquières (RABD), who lived in France, comments on this passage in what appears to be a rather shocked tone: "I have never heard of women being scourged with a rod." Another contemporary, Rabbenu Tam, who likewise lived in France, remarks in another context: "Wife beating is unheard of among the Children of Israel."[42]

41. To be sure, Islamic law forbids physical abuse of the wife, and makes such mistreatment a valid ground for divorce. The Koran (4:38), however, says: *But those women whose perverseness ye shall be apprehensive of, rebuke; and remove them into separate apartments, and chastise them* (Sale's translation). See also Amram, p. 70–71, for other sources.

42. M. Guedemann, *Geschichte des Erziehungswesens* (Wien, 1880–88), *I*, 263.

The same is true of later authorities. Thus R. Israel of Krems, who lived in the fourteenth and fifteenth centuries, commenting on R. Asher's interpretation of B. BḲ 32a, says: "A man is forbidden to beat his wife, and is moreover liable for any injuries suffered by her. If he is in the habit of beating her or continually insulting her in public, he should be forced to divorce her and pay her her kĕṯubbah." And R. Śimḥah ben Samuel of Speyer, a leading member of the Rabbinical Synod of the Rhine Provinces held in 1223, reinforces this rule by declaring that if such an abusive husband refuses to submit to it, the court may appeal to Gentile authorities in order to have them compel him to do as the law of Israel prescribes—an extreme procedure rarely resorted to by Rabbinic authorities.

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I.K.

THE BOOK OF
WOMEN

COMPRISING FIVE TREATISES IN
THE FOLLOWING ORDER

1. LAWS CONCERNING MARRIAGE
2. LAWS CONCERNING DIVORCE
3. LAWS CONCERNING LEVIRATE MARRIAGE AND ḤĂLIṢAH
4. LAWS CONCERNING THE VIRGIN MAIDEN
5. LAWS CONCERNING THE WAYWARD WOMAN

TREATISE I

LAWS CONCERNING MARRIAGE

Involving Four Commandments,
Two Positive and Two Negative
To Wit

1. To marry a wife by means of kĕṯubbah and betrothal;
2. That a woman should not surrender herself without kĕṯubbah and betrothal;
3. That the husband should not withhold her food, her raiment, and her conjugal rights;
4. To be fruitful and multiply out of her.

An exposition of these commandments is contained in the following chapters.

NOTE

In the list of 613 commandments prefixed to the Code, those dealt with in the present treatise appear in the following order:

Positive commandments:

[1] 213. To wed a wife by means of betrothal, as it is said: *When a man taketh a wife and marrieth her* (Deut. 24:1);

[4] 212. To be fruitful and multiply, as it is said: *Be fruitful and multiply, and replenish the earth* (Gen. 1:28).

Negative commandments:

[2] 355. That a woman should not be a harlot, that is, one who surrenders herself without kĕṯubbah and betrothal, as it is said: *There shall be no harlot of the daughters of Israel* (Deut. 23:18);

[3] 262. Not to withhold from a designated Hebrew maidservant her food, her raiment, and her conjugal rights, as it is said: *Her food, her raiment, and her conjugal rights, shall he not diminish* (Exod. 21:10), and this rule applies to other women as well.

CHAPTER I

1. Before the revelation of the Torah, when a man would encounter a woman in the street, if both consented to marriage, he would bring her into his house and would have intercourse with her in privacy, and thereby she would become his wife.

Upon the revelation of the Torah, the people of Israel were commanded that if a man wishes to marry a woman, he must first acquire her in the presence of witnesses, and only thereafter does she become his wife, as it is said: *If any man take a wife and go in unto her* (Deut. 22:13).

2. The aforementioned acquisition is a positive commandment of the Torah, and a woman may be acquired in one of the following three ways: with money, by a writ, or by an act of sexual intercourse. Intercourse and writ are based on the Torah, while money is of Scribal origin.

These modes of acquisition are generally called betrothal (*ḳiddušin*) or espousal (*'erusin*), and a woman acquired in one of these ways is called betrothed or espoused.

3. Once a woman has been acquired, and thus become betrothed, even if no intercourse has taken place, nor has she entered her husband's house, she is considered a married woman, and anyone other than her husband who has intercourse with her is liable to the penalty of death imposed by the court. And if her husband wishes to divorce her, she requires a get.

4. Before the revelation of the Torah, when a man would encounter a woman in the street, if both were willing, he would pay her her fee, have intercourse with her right there at the crossroads, and go his way. Such a woman is called a harlot.

Upon the revelation of the Torah, harlots were forbidden, as it is said: *There shall be no harlot of the daughters of Israel* (Deut. 23:18).

Therefore, anyone who has intercourse with a woman for the purpose of harlotry, without betrothal, is liable to a flogging on the authority of the Torah, because he has had intercourse with a harlot.

5. All those with whom intercourse is forbidden in the Torah, and made punishable by excision, namely the ones enumerated in Chapter 18 of the Book of Leviticus, are called forbidden degrees, each one of them being called a forbidden degree; for example, one's mother, sister, daughter, and the like.

6. There are other women who are forbidden by tradition, and are prohibited on Scribal authority. These are called secondary forbidden degrees, because they are secondary to the primary degrees, and each one of these is called a secondary degree.

There are twenty women in this category, to wit:

1) One's maternal grandmother, without limit, in ascending order, including even one's great-great-grandmother on the female side, and upwards.

2) The mother of one's maternal grandfather, and she alone.

3) One's paternal grandmother. This one, too, has no limit, and includes even one's paternal great-great-grandmother, and upwards.

4) The mother of one's paternal grandfather, and she alone.

5) The wife of one's paternal grandfather. This one, too, has no limit, so that even the wife of our forefather Jacob would be forbidden to anyone of us.

6) The wife of one's maternal grandfather, and she alone.

7) The wife of one's father's brother, by the same mother.

8) The wife of one's mother's brother, whether by the same mother or by the same father.

9) One's son's daughter-in-law. This one, too, has no limit, including even the daughter-in-law of one's great-great-grandson, and downwards, to the end of the world, so that the wife of anyone of us would be of secondary forbidden degree even to our forefather Jacob.

10) The daughter-in-law of one's daughter, and she alone.

11) The daughter of one's son's daughter, and she alone.
12) The daughter of one's son's son, and she alone.
13) The daughter of one's daughter's daughter, and she alone.
14) The daughter of one's daughter's son, and she alone.
15) The daughter of one's wife's son's son, and she alone.
16) The daughter of one's wife's daughter's daughter, and she alone.
17) The mother of one's wife's paternal grandmother, and she alone.
18) The mother of one's wife's maternal grandfather, and she alone.
19) The mother of one's wife's maternal grandmother, and she alone.
20) The mother of one's wife's paternal grandfather, and she alone.

There are thus four women of secondary forbidden degree whose prohibition continues without limit, to wit: one's maternal grandmother, and upwards; one's paternal grandmother, and upwards; the wife of one's paternal grandfather, and upwards; and the wife of one's son's son, and downwards.

7. All women with whom intercourse is forbidden by the Torah, but without liability to excision, are called women prohibited by a negative commandment, or women prohibited for the sake of holiness. Of these there are nine, to wit:

1) A widow, forbidden to a High Priest.
2) A divorcée, a harlot, and a profaned woman, forbidden both to a High Priest and to a common priest.
3) A female bastard, forbidden to an Israelite, and a daughter of Israel, forbidden to a male bastard.
4) A daughter of Israel, forbidden to an Ammonite or a Moabite.
5) A daughter of Israel, forbidden to a man whose testicles are crushed, or whose penis has been amputated.
6) A divorcée, forbidden to her previous husband after she had been married to another man.

7) A sister-in-law (*yĕḇamah*) married to a stranger while still subject to levirate marriage, forbidden to her levir.

8) A woman who has undergone *ḥălişah,* and who is therefore considered the same as a divorcée, forbidden to a priest, by Scribal enactment.

9) The Nĕṯinim, both male and female, who are considered the same as bastards, and are forbidden by Scribal enactment. In the Laws Concerning Forbidden Intercourse it will be explained who are the Nĕṯinim.

8. There are also persons with whom intercourse is forbidden by a positive commandment, and who are distinct from those prohibited by a negative commandment. There are three of them, to wit: an Egyptian or an Edomite of the first and second generations, both male and female; and a non-virgin, forbidden to a High Priest. The Torah does not say of these, "he shall not enter," or "he shall not take." Rather, from the positive commandment *The third generation shall enter into the assembly of the Lord* (Deut. 23:9), you necessarily conclude that the first and second generations may not enter. Likewise, from the positive commandment *And he shall take a wife in her virginity* (Lev. 21:13), you necessarily conclude that if she is no longer a virgin, he may not take her to wife. And a negative commandment deduced from a positive commandment has the force of a positive commandment.

CHAPTER II

1. A female child, from birth until she is a full twelve years old, is called a minor or a little girl. Even if she grows many hairs within this period they are considered the same as moles. If, however, she grows two hairs in the nether parts of the body, in the places known for growth of hair, and is twelve years and one day old or over, she is called a maiden.

2. The two hairs grown at that age are called the nether token. Once a girl produces the nether token, she is called a maiden, until the expiration of six full months. From the beginning of the day that completes the six months and onwards, she is called a mature woman. Thus the interval between a maiden and a mature woman is only six months.

3. If she reaches the age of twelve years and one day without growing the two hairs, she is still considered a minor, until she reaches the age of twenty, even if she shows the tokens of a barren woman. Should she then grow the two hairs, even at the age of twenty, she becomes a maiden for the next six months, and only thereafter is she called a mature woman.

4. If she is twenty years less thirty days old, and has not yet grown the two hairs, and shows all the tokens of a barren woman, she is considered a barren woman.

If all the tokens of a barren woman are not visible upon her, she remains a minor, until she grows the two hairs, or until she becomes thirty-five years and one day old.

5. If she reaches this latter age without growing the two hairs, she is called a barren woman, even if none of the tokens of barrenness is visible upon her. You thus learn that a barren woman has no period of maidenhood, and passes directly from minority to maturity.

6. These are the tokens of a barren woman: she has no breasts, finds sexual intercourse difficult, does not have the lower abdominal curve of normal women, and has a voice so deep that one cannot tell whether it is a man's or a woman's voice.

A maiden, a mature woman, and a barren woman are all designated as adult women.

7. A girl has tokens also in the upper parts of her body which are termed the upper tokens. They are the following: when she

moves her arms behind her back, a wrinkle is formed at the site of the breast; the head of the breast darkens in color; when the hand is placed over the nipple to depress it, it takes some time to resume its original shape; the head of the nose of the breast splits, forming a little ball, or, as my teachers have explained it, the nose itself splits; also the breasts overhang; they become capable of shaking; a ring is formed around the crown, i.e., the site of the swollen flesh above the genital organ, over against the belly; and this flesh softens and ceases to be hard. There are thus eight upper tokens.

8. If one or all of these tokens appear in a girl twelve years old or less, no attention need be paid to them, and she is still considered a minor.

Once she becomes twelve years and one day old and exhibits the nether token, no attention need be paid to any of these upper tokens.

If no nether token is visible, but any one of these upper tokens is present, there is doubt as to whether she is a maiden or a minor, and the more stringent rules should be applied to her.

If all these upper tokens appear in her, but not the nether token, she is definitely an adult woman, because it is impossible for all the upper tokens to appear unless the nether token has already appeared but dropped off.

9. If a girl has given birth after reaching the age of twelve years, she is considered an adult, even if she shows no tokens whatsoever, neither upper nor nether, because children constitute as decisive a proof of puberty as tokens.

10. A male child is called a minor or a little boy from his birth until he becomes thirteen years old. Even if he grows many hairs within this period of time, they do not constitute a token, but are considered the same as a mole.

If after he becomes thirteen years and one day old, he grows two hairs in the nether part of the body, in the places known for growth of hair, he is considered an adult and is called a man.

11. If he reaches this age without growing two hairs, he remains a minor until he becomes twenty years less thirty days old, even if the signs of a eunuch appear in him.

If he reaches this latter age without growing two hairs in the nether parts nor two hairs of beard, the rule is as follows: If any one of the tokens of a eunuch appear in him, he is a eunuch, and is considered an adult in every respect. If none of the tokens of a eunuch appear in him, he remains a minor, until he either grows two hairs in the nether parts where it is natural for them to grow, or until he becomes thirty-five years and one day old.

If he reaches this age without growing the two hairs, he is considered a eunuch, even if none of the tokens of a eunuch appear in him.

12. If at the age of twenty years less thirty days he has not grown the two hairs in the nether parts, but has grown two hairs of beard, he is not regarded as a eunuch, even if one of the tokens of a eunuch appears in him, but rather remains in his minority until either all the tokens of a eunuch appear in him or he becomes thirty-five years and one day old.

13. These are the tokens of a eunuch: he has no beard; his hair is soft; his skin is smooth; his urine does not froth; when he urinates the stream does not form an arch; his semen is watery; his urine does not ferment; when he bathes during the rainy season his body does not steam; and his voice is so thin that one cannot tell whether it is a man's or a woman's voice.

14. Such a congenital eunuch is generally called "sun-made eunuch." On the other hand, a boy whose penis or testicles have been cut loose, or torn loose, or crushed, in the manner used by heathens, is called "man-made eunuch." The latter is considered an adult as soon as he becomes thirteen years and one day old, because he can never produce the tokens of puberty.

15. A boy thirteen years and one day old, who does not show the nether token, but exhibits all the upper tokens, is subject to doubt as to whether he is an adult or a minor.

If, however, he has not been examined in his nether parts, he is presumed to be an adult as soon as the tokens of maturity have appeared in his upper parts.

16. The minimum length of the two hairs mentioned as tokens of puberty in a boy or a girl is generally enough for the tip to be bent over to the root.

From the time the hairs are long enough to be snipped off with the points of scissors, and until the time they are long enough for the tip to be bent over to the root, they are subject in every respect to the more stringent rules.

In accordance with this stringency, we either consider the boy or the girl an adult, on the ground that the hairs are long enough to be snipped off with the points of scissors; or we consider them minors, on the ground that the hairs are not long enough for the tip to be bent over to the root.

17. These two hairs must be located at the site of the genitals. The entire area thereof is the locus for the tokens of puberty—above the reproductive organs, below them, or upon the organs themselves. Both hairs must grow in the same spot and must have follicles at their roots. Even if both hairs issue from the same follicle, they constitute a valid token.

If two follicles are found next to each other, but without any hairs in them, they, too, constitute a valid token, because the presumption is that there is no follicle without hair, and that in this case the hairs had grown but subsequently dropped off.

18. If a girl grows two hairs within her first twelve years, or a boy within his first thirteen years, the hairs are considered the same as a mole, as we have explained. Even if these hairs remain in their place after age thirteen for a boy, or after age twelve for a girl, they still do not constitute a token.

19. When does this rule apply? When the individuals have been examined within that period of time, and it has been ascertained that the hairs are to be regarded the same as a mole. If, however, they are examined only some time afterwards, and

the two hairs are then found, they are presumed to be tokens of puberty, and it cannot be said, perchance they had grown before their proper time, and are thus to be considered the same as a mole.

20. The examination of a girl, whether within that period of time, that is to say, within her entire twelfth year, or before it, or after it, must be performed by pious and trustworthy women. Even if only one woman performs the examination, her testimony may be relied upon, as to whether the girl has or has not grown the two hairs.

21. The year mentioned in connection with a boy or a girl, or with vows of valuation, or with any other subject, is neither a lunar year nor a solar year, but a calendar year, comprising ordinary and leap years, as fixed by the courts according to their practice, as we have explained in the Laws Concerning the Sanctification of the New Moon. This year is the one employed in all matters touching religion.

22. In matters of age, we may not rely upon the testimony of women or relatives, but only upon the testimony of two male witnesses who are qualified to testify.

23. If a father says, "This son of mine is nine years and one day old," or "This daughter of mine is three years and one day old," his testimony may be relied upon in regard to sacrifice, but not in regard to flogging or other penalties.

If he says, "This son of mine is thirteen years and one day old," or "This daughter of mine is twelve years and one day old," his testimony may be relied upon in regard to ordinary vows, vows of valuation, vows of prohibition, and vows of consecration, but not in regard to flogging or other penalties.

24. He who has both male and female genital organs is called a hermaphrodite, and is subject to doubt as to whether he is male or female, since he will never have any token by which it might be determined whether he is surely male or surely female.

25. He who has neither male nor female genital organs, the pertinent area of the body being covered over, is called a *ṭumṭum,* and his status is likewise in doubt. If the covering is subsequently torn open, and he is found to be male, he is regarded as an assured male; if he is found to be female, he is regarded as an assured female.

A ṭumṭum and a hermaphrodite who have reached the age of twelve years and one day are presumed to be adults, and it is as such that they are generally referred to.

26. Wherever male or female deaf-mutes are mentioned, they signify persons who can neither hear nor speak. A person able to speak but not to hear, or to hear but not to speak, has the same status as any other person. A man or a woman of perfect mind, who is neither a deaf-mute nor an imbecile, is called a normal man or a normal woman, respectively.

27. Thus all the terms whose meaning we have explained in these two chapters are twenty in number. They are the following: betrothal, prohibited degree, secondary degree, persons forbidden by a negative commandment, persons forbidden by a positive commandment, minor female, maiden, mature woman, barren woman, adult woman, nether token, upper token, minor male, sun-made eunuch, man-made eunuch, adult male, hermaphrodite, ṭumṭum, deaf-mutes, normal persons.

Keep these terms constantly before you, and let not their meanings out of your sight, so that we will have no need to explain each of these terms every time we mention it.

CHAPTER III

1. How does a woman become betrothed? If the man uses money as the token of betrothal, it should be not less than a *pĕruṭah,* in coin or in its equivalent. He should then say to the woman, "Behold, thou art betrothed unto me," or "Behold, thou art espoused unto me," or "Behold, thou art become a

wife unto me by virtue of this," and should give it to her in the presence of witnesses.

It is the man who must pronounce the words which signify that he is acquiring the woman for himself as his wife, and it is he who must give her the money.

2. If it is the woman who has delivered the token of betrothal and has said to the man, "Behold, I am betrothed unto thee," "Behold, I am espoused unto thee," "Behold, I am become a wife unto thee," or has used any other expression signifying acquisition, she is not betrothed.

If it is she who has delivered the token of betrothal to him, while he has pronounced the formula of betrothal, she is likewise not betrothed.

If he has delivered the token of betrothal, while she has pronounced the formula of betrothal, she is betrothed out of doubt.

3. If a man uses a document as a token of betrothal, he should write on a piece of paper, a potsherd, a leaf, or anything else he may choose, "Behold, thou art betrothed unto me," or "Behold, thou art espoused unto me," or any similar expression, and should then give it to her in the presence of witnesses.

4. He must write this document specifically for this woman that is to be betrothed, as is the rule in the case of a get, and he may write it only with her consent.

If he writes it not specifically for her, or specifically for her but without her consent, she is not betrothed, even if he delivers it to her with her consent and in the presence of witnesses.

5. If he betrothes her by way of an act of intercourse, he must say to her, "Behold, thou art betrothed unto me," or "Behold, thou art espoused unto me," or "Behold, thou art become a wife unto me, by way of this act of intercourse," or use any similar expression, then seclude himself with her in the presence of two witnesses, and finally consummate the act of intercourse with her.

He who betrothes a woman by way of an act of intercourse,

supposedly has in mind the consummation of it, and therefore, once he does consummate it, she is betrothed. And the betrothal is valid whether the act of intercourse was performed in a normal or abnormal manner.

6. The words pronounced by the man when betrothing a woman must signify that he is acquiring her, and not that he causes himself to be acquired by her.

How so? If he says to her, or writes in the document that he gives her, "Behold, I am become thy master," "Behold, I am become thy spouse," "Behold, I am become thy husband," or uses any similar expression, there is no betrothal here at all.

If he says to her, or writes for her, "Behold, thou art become my wife," "Behold, thou art become my spouse," or "Behold, thou art become acquired unto me," "Behold, thou art mine," "Behold, thou art my purchase," "Behold, thou art my designated one," "Behold, thou art under my authority," "Behold, thou art bound unto me," or uses any similar expression, she is validly betrothed.

7. If he says to her, or writes for her, "Behold, thou art singled out for me," "Behold, thou art appointed unto me," "Behold, thou art my helpmeet," "Behold, thou art my mate," "Behold, thou art my rib," "Behold, thou art enclosed unto me," "Behold, thou art under me," "Behold, thou art restricted unto me," "Behold, thou art seized unto me," the betrothal is of doubtful validity, provided that he had spoken to her first on matters concerning betrothal. If he had not spoken to her first on such matters, no attention need be paid to these formulae.

8. A man may betroth a woman in any language that she understands, so long as the meaning of those words in that language is that he has acquired her, as we have explained.

If a man had spoken to a woman on matters concerning betrothal, and she had signified her consent, and if he thereupon proceeds to betroth her, neither specifying nor saying anything

more to her, but merely giving into her hand the token of betrothal, or performing an act of intercourse with her, the fact alone that they had been discussing the matter is sufficient, and no additional specifications are necessary.

Similarly, the witnesses to the betrothal or to the divorce need not be told by him, "You are my witnesses"; rather, once he has performed the act of divorce or of betrothal in their presence, the woman is validly betrothed or divorced.

9. If a man says to a woman, "Betroth thyself to half of me," she is validly betrothed. With what may this be compared? With one who says to a woman, "Be thou my wife, thou and also another woman," from which it follows that she has only one half of the man.

If, however, he says to her, "Half of thee is to be betrothed unto me," she is not betrothed, because one woman may not become the wife of two men.

Similarly, if he says to her, "Behold, thou art betrothed unto me, and also to So-and-so," she is not betrothed.

10. If he says to her, "Behold, half of thee is to be betrothed unto me with this pĕruṭah, and the other half of thee with that pĕruṭah," or "Half of thee is to be betrothed unto me with this half-pĕruṭah, and the other half of thee with that half-pĕruṭah," she is validly betrothed.

If he says to her, "Half of thee is to be betrothed unto me with this pĕruṭah today, and the other half of thee with that pĕruṭah tomorrow," "Both halves of thee with a pĕruṭah," "Let thy two daughters be unto my two sons with a pĕruṭah," "Let thy daughter be betrothed unto me and let thy cow be sold unto me for a pĕruṭah," or "Let thy daughter and thy land be unto me with a pĕruṭah"—in all these cases the woman is doubtfully betrothed.

11. A father may betroth his daughter without her consent as long as she is a minor, and she also remains under his authority

as long as she is a maiden, as it is said, *I gave my daughter unto this man to wife* (Deut. 22:16); and the token of betrothal goes to her father.

He also has title to anything she may find, to her earnings, and to her kĕṯubbah, if she is divorced or widowed after espousal. He has title to all these until she comes of age.

Therefore, the father may accept the token of betrothal in behalf of his daughter from the day of her birth until she comes of age. And even if she is a deaf-mute or an imbecile, and her father has her betrothed, she has the status of a fully married woman.

If she is three years and one day old, she may be betrothed by an act of intercourse, with the consent of her father. If she is less than that, and her father has her betrothed by an act of intercourse, she is not betrothed.

12. Once a girl comes of age, her father no longer has any authority over her, and she has the same status as all other women, who may not be betrothed unless they consent thereto. Similarly, if her father had given her in marriage and she was widowed or divorced while her father was yet living, she is subject to no authority but her own, even though she is still a minor; for once she is married, her father loses his authority over her forever.

13. If a girl is betrothed before coming of age and without her father's consent, she is not betrothed, even if the father grants his consent after the betrothal. And even if she is widowed or divorced after this betrothal, she is not forbidden to a priest. Both she and her father may protest the validity of such a betrothal. Moreover the betrothal is not valid whether performed in the father's presence or in his absence.

14. If a girl is of age out of doubt, whether she was betrothed by her father without her consent, or had herself betrothed without her father's consent, she is doubtfully betrothed, and therefore requires a get out of doubt.

A man may appoint an agent to betroth a woman in his behalf, whether a particular woman or any woman at all.

Similarly, an adult woman may appoint an agent to accept the token of betrothal in her behalf, whether from a particular man or from any man whatsoever.

Likewise, a father may appoint an agent to accept the token of his daughter's betrothal, so long as she is under his authority.

A father may say to his minor daughter, "Go forth and accept the token of your betrothal."

15. Whosoever appoints an agent to accept the token of betrothal, must make the appointment in the presence of witnesses. On the other hand, he who appoints an agent to betroth a woman for him, need not make the appointment in the presence of witnesses, because the function of witnesses to the appointment of an agent by a principal is merely to establish the truth of the fact. Therefore, if both the agent and the principal acknowledge the fact, they need no witnesses, as in the case of an agent for a get, or of an agent commissioned to separate the priest's share of produce, and in similar cases everywhere. For a principal's agent is equivalent to the principal himself, and requires no witnesses.

16. The agent may serve also as a witness; therefore, if a man appoints two agents to betroth a woman for him, and they go forth and betroth her, the very same individuals who act as his agents may act also as witnesses to the betrothal, and need not perform the betrothal in the presence of two other witnesses.

17. Anyone is eligible to act as agent, except a deaf-mute, an imbecile, and a minor, because these do not have a mature mind, and a heathen, because he is not a son of the covenant, for it is said, *Thus ye also shall offer* (Num. 18:28), the word *also* implying the inclusion of the agent. And just as *ye* implies sons of the covenant, so also your agents must be sons of the covenant, which excludes the heathen.

A slave, however, although he may act as an agent in money

matters, is disqualified from acting as an agent in matters of marriage and divorce, because he himself is not subject to the laws of marriage and divorce.

18. The agent appointed to perform a betrothal in his principal's behalf should say to the woman, "Behold, thou art betrothed to So-and-so with this money," or "with this document," If the agent represents the woman in accepting the token of betrothal, the bridegroom should say to him, "Behold, So-and-so, who has sent thee, is betrothed unto me," and the agent should respond, "I have betrothed her unto thee," or "I have espoused her unto thee," or "I have given her to wife unto thee," or use some analogous expression.

Similarly, he who betrothes a woman at the hands of her father, should say to him, "Behold, thy daughter So-and-so is betrothed unto me," and the father should respond, "I have betrothed her unto thee." If the father or the agent responds with no more than "Yea," it is sufficient; indeed he may even remain silent.

If the parties had been discussing this matter, and the man thereupon gives the token of betrothal to the father or to the agent, without specifying or saying anything further, it is sufficient, and the woman is validly betrothed.

If the betrothal is performed with a document, it must be written with the consent of the father or the agent. The same applies to all matters touching betrothal, the rule being the same, whether the bridegroom negotiates directly with the bride, or whether an agent negotiates with an agent or with the father.

19. It is a religious duty for a man to betroth his wife himself, rather than through his agent; likewise, it is a religious duty for a woman to accept betrothal herself, rather than through her agent.

And even though the father has the authority to betroth his daughter, while she is a minor or a maiden, to whomsoever he wishes, it is not proper to do so. Rather, the Sages have ordained that a man should not have his daughter betrothed while she is a minor—he should delay until she reaches adulthood

and herself declares, "I desire to be wed to So-and-so." Similarly, it is improper for a man to betroth unto himself a minor female, nor should he betroth a woman until he has first seen her and found her acceptable in his eyes, lest she should find no favor in his eyes, with the result that he would have to divorce her, or else lie with her the while he dislikes her.

20. If a man betrothes a woman by an act of intercourse, the betrothal is valid on the authority of the Torah; so also is betrothal with a document, on the same authority.

Just as in the case of divorce the document completes it, as it is said, *and he shall write unto her a bill of divorcement* (Deut. 24:1), so does the document of betrothal complete the betrothal. Betrothal with money, however, is based only on the authority of the Scribes, although it may be said that the validity of money as token of betrothal is derived from the Torah, as interpreted by the Scribes, to wit: it is said, *when a man taketh a wife* (*ibid.*), whereto the Sages have remarked that "taking" signifies acquisition with money, as it is said, *I will give the price of the field, take it of me* (Gen. 23:13).

21. Even though the root of the matter is as aforesaid, it has long become the custom in all Israel to effect betrothal with money or its equivalent. Likewise, if one prefers to effect betrothal with a document, he may do so. But one may not at the outset betroth by an act of intercourse. If he does so nevertheless, even though the betrothal is perfectly valid, he is liable to a flogging for disobedience, in order that the Children of Israel should not become wanton in this matter.

22. Similarly, if a man betrothes a woman without prior negotiation, or if he betrothes her in the street, even though the betrothal is perfectly valid, he is liable to a flogging for disobedience, in order that this procedure should not become a habit leading to harlotry, inasmuch as it makes the woman appear similar to the harlot who was common in the time preceding the revelation of the Torah.

23. Whosoever betrothes a woman, whether he does so himself or through an agent, must pronounce, he or his agent, a benediction before the betrothal, in the same manner as a benediction is recited over all precepts, and only thereafter may he perform the betrothal. If, however, he betrothes her without first reciting the benediction, he should not recite it after the betrothal, because this would be a benediction to no purpose, seeing that what has been done is already done.

24. How does the benediction read? "Blessed art Thou, O Lord, our God, King of the universe, who has hallowed us with His precepts, and has separated us from the forbidden degrees; who has prohibited to us those that are espoused, but has permitted us those that are wedded by way of bridal canopy and betrothal. Blessed art Thou, O Lord, Sanctifier of Israel." This is the benediction of espousal, and it is customary among the people to perform this blessing over a cup of wine or beer. If wine is available, the benediction over the wine should be pronounced first, then the blessing over the espousal, and then the betrothal of the woman should be performed. If no wine or beer is at hand, the benediction over the betrothal is the only one to be recited.

CHAPTER IV

1. A woman may not be betrothed except with her consent, and if one betrothes her against her will, she is not betrothed. On the other hand, if a man is coerced into betrothing a woman against his will, she is betrothed.

A man may simultaneously betroth many women, provided that if the betrothal is with money, there is a pĕruṭah for each woman.

One of these women, or another person, may accept the token of betrothal in behalf of all of them, with their consent.

2. If a man betrothes a woman, and with her consent hands the token of betrothal to her female friend; and if while hand-

ing it to her, he says to her, "And thou also," or "And thou likewise," or something similar, both women are betrothed to him.

If, however, while handing to her friend the token, he says to her, "And thou," the woman receiving the token is doubtfully betrothed—perchance his intention was merely to see what was in her heart, as if he had said to her, "And thou, what sayest thou in this matter?" And therefore she may have accepted the token of betrothal the while he was asking her to see what was in her heart. For this reason she is doubtfully betrothed.

3. If a man says to a woman, "Behold, thou art betrothed unto me with this denar," and she takes it and throws it down before him, or casts it into the sea, or into fire, or into anything else that would cause it to perish, she is not betrothed.

If she says to him, "Give it to my father," or "to your father," or "to So-and-so," and he does so, she is likewise not betrothed.

If, however, she says to the man, "Give it to him in order that he may accept it in my behalf," and the man does so, she is betrothed.

4. If she says, "Deposit it on the rock," she is not betrothed, but if the rock belongs to her, she is betrothed. If the rock belongs to both of them jointly, she is doubtfully betrothed.

If he says to her, "Behold, thou art betrothed unto me with this loaf of bread," and she replies, "Give it to a poor man," she is not betrothed, even if that poor man is dependent upon her for support.

If she says, "Give it to the dog," she is not betrothed. If the dog belongs to her, she is betrothed. If the dog is running after her in order to bite her, and she says to the man, "Give it to this dog," she is doubtfully betrothed.

5. If a man is selling produce, utensils, or anything similar, and a woman comes along and says to him, "Give me some of these," and he replies, "If I give it to you, will you be betrothed to me?", the rule is as follows: If she replies, "Yes," and he gives

it to her, she is betrothed. If, however, she replies, "Give me some of them," or "Throw me some," or uses any expression the implication of which is, "Do not mock me with such words, but just give me," and he then gives them to her, she is not betrothed.

Similarly, if he is drinking wine, and she says to him, "Give me a cup of it," and he replies to her, "If I give it to you, will you be betrothed to me with it?", and she thereupon says, "Do give me to drink!", or "Give!", or "Give to drink!", or "Throw!", she is not betrothed, because her words seem to imply merely, "Just give me to drink, and do not mock me with other matters."

6. If a man betrothes a woman in the presence of only one witness, no attention need be paid to such a betrothal, even if both parties acknowledge it. This rule applies even more so to a betrothal effected with no witnesses at all present.

If one betrothes a woman in the presence of witnesses who are disqualified according to the Torah, she is not betrothed. If the witnesses are disqualified according to Scribal law, or if their disqualification according to the Torah is in doubt, the rule is as follows: If the man still wishes to wed her, he must repeat the betrothal before qualified witnesses. If he does not wish to wed her, she requires a get from him out of doubt. Even if the woman denies it and contradicts the witnesses by saying, "You have not betrothed me," she must be compelled to accept a get.

The same rule applies to all doubtful betrothals. If the man still wishes to wed, he must go back and perform a betrothal of assured validity; if he does not wish to wed, the woman requires a get from him out of doubt.

7. If a minor betrothes a woman, his betrothal is invalid. If, however, an adult betrothes a female minor who is an orphan or is no longer under her father's authority, the rule is as follows: If she is less than six years old, and even if she is exceedingly clever and can recognize and make distinctions, there is no betrothal, and she need not perform the act of refusal. If she is ten or more years old, and even if she is exceedingly simple-minded, her betrothal is valid insofar as it requires refusal, seeing

that she was betrothed with her consent. If she is aged between six years and the end of her tenth year, she must be examined as to the state of her mind: if she is aware of, and can make distinctions in, matters of marriage and betrothal, she requires refusal; if not, the betrothal is invalid insofar as to require refusal, and hence she does not require it.

8. How is a girl betrothed insofar as to require refusal? If having been betrothed she does not wish to abide with her husband, she must signify her refusal in the presence of two witnesses, by saying, "I do not wish to live with him," and may then leave without a get, as will be explained in the Laws Concerning Divorce. Such a girl is called "one who has refused."

Why may she leave without a get? Because according to the Torah her betrothal is not completely valid; it is valid only according to Scribal law, and its validity is conditional: If she abides with her husband until she comes of age, her betrothal becomes complete and she assumes the status of a fully married woman, without his having to betroth her again after she had come of age. Therefore, if she does not wish to abide with him, she must signify her refusal, and may then leave without a get.

9. If a male deaf-mute marries a normal woman, and likewise, if a female deaf-mute marries a normal man, their betrothal is completely valid, not according to the Torah, but only according to Scribal law.

Therefore, if a normal man comes forth thereafter and betrothes this normal wife of the deaf-mute, she is betrothed to the former with a completely valid betrothal; consequently he must give her a get, and only then is she permitted to her deaf-mute husband.

If, however, an imbecile betrothes a normal woman, or if a normal man betrothes a female imbecile, there is no betrothal at all, either according to the Torah or according to Scribal law.

10. If a eunuch, either congenital or man-made, performs a betrothal, or if a barren woman is betrothed, the betrothal is completely valid.

11. If a ṭumṭum or a hermaphrodite betrothes a woman, or is betrothed by a man, the validity of the betrothal is in doubt, and they require a geṭ on account of this doubt.

12. If a man betrothes a woman of the prohibited degrees, his act is null and void, because betrothal has no effect upon women of the prohibited degrees, with the exception of a menstruating woman; for if one betrothes a menstruating woman, the betrothal is completely valid, although it is not proper to do so.

13. If a married woman holds out her hand and accepts the token of betrothal from another man in the presence of her husband, she is betrothed to the second man, since a woman who says to her husband, to his face, "You divorced me," is to be believed, on the presumption that no woman would act brazenly before her husband.

If, however, the other man betrothes her in her husband's absence, the betrothal has no effect until she produces evidence that she had been divorced before she accepted the token of betrothal, the presumption being that when not in her husband's presence, she might act brazenly.

14. If a man betrothes a woman of the secondary forbidden degrees, or of those forbidden by a negative or positive commandment, or if a levir betrothes the co-wife of his widowed sister-in-law, the betrothal is completely valid. The only exception is the case of the sister-in-law betrothed by a stranger, the validity of whose betrothal is doubtful. For the Sages were in doubt as to whether betrothal takes effect upon the sister-in-law just as it does upon the other women forbidden by a negative commandment, or whether it does not take effect upon her, just as it does not upon a woman of the prohibited degrees. Therefore, even though a man is forbidden to wed any of these women, he nevertheless must dismiss them with a geṭ.

15. If a man betrothes a heathen woman or a bondswoman, the betrothal is invalid, and the woman involved has the same status after the betrothal as she had before it.

Similarly, if a heathen or a slave betrothes a daughter of Israel, their betrothal is invalid.

If an apostate Israelite betrothes a woman, the betrothal is completely valid, even though he worships idols deliberately, and the woman therefore requires a get from him.

16. If a man betrothes a woman who is half-bondswoman and half-free, the betrothal is not completely valid until she is emancipated. As soon as she is emancipated, her betrothal becomes complete, just as in the case of the betrothal of a minor female who subsequently has come of age, and the man need not betroth her once more.

If another man comes forth and betrothes her after her emancipation, the validity of both betrothals is in doubt.

17. Who is the "designated bondswoman" that is mentioned in the Torah? It is the one that is half-bondswoman and half-freewoman and is betrothed by a Hebrew slave.

If a man half-slave and half-free betrothes a freewoman, the validity of the betrothal is in doubt.

18. If an intoxicated man betrothes a woman, the betrothal is valid, even if he is exceedingly drunken. If, however, he has reached the drunkenness of Lot, his betrothal is invalid. This matter requires thorough deliberation.

19. If a man betrothes a woman with less than a pĕruṭah's worth, the betrothal is invalid. If, however, he betrothes her with some food, a utensil, or something similar worth less than a pĕruṭah, the validity of the betrothal is in doubt, and because of this doubt she requires a get, for it is possible that this article is worth a pĕruṭah in some other place.

You thus learn that if one betrothes with something equivalent to money, the rule is as follows: If it has the value of a pĕruṭah in that country, the betrothal is assuredly valid; if it does not, the validity of the betrothal is in doubt.

It would seem to me, however, that if he betrothes with a

cooked dish or a vegetable that is perishable, or with something of similar nature, and it is not worth a pĕruṭah in that locality, the woman is not at all betrothed, because such an article cannot reach another place without spoiling and becoming useless, and thus will not be worth a pĕruṭah there. This is a reasonable consideration and deserves to be relied upon.

20. If a man betrothes a woman with less than a pĕruṭah's worth, or if he betrothes two women with a pĕruṭah's worth, the betrothal is invalid, even if he subsequently sends betrothal gifts.

Thus also, if a minor performs the act of betrothal, it is invalid, even if he sends betrothal gifts after he has come of age, because these gifts were sent in pursuance of the original betrothal which is invalid.

21. If one betrothes a woman with money or with a document, he need not deliver the token of betrothal directly into her hand; rather, so long as she agrees that he may throw the token to her, and he does throw it, whether into her hand, her lap, her courtyard, or her field, she is betrothed.

If, however, she stands in the husband's domain, he must deliver it directly into her hand or into her lap. If she stands in a domain jointly owned by both of them, and he, with her consent, throws the token of betrothal to her, but it does not reach her hand or her lap, the validity of the betrothal is in doubt.

Even if she says to him, "Deposit the token of betrothal in this place," and the place is owned jointly by both of them, the validity of the betrothal is still in doubt.

22. If the two are standing in the public domain, or in a domain belonging to neither one of them, and he throws the token of betrothal to her, the rule is as follows: If it falls nearer to him, she is not betrothed; if it falls nearer to her, she is betrothed; if it falls midway between them, or if there is doubt whether it fell nearer to him or to her, and the token is lost before it reaches her hand, the validity of the betrothal is in doubt.

What is meant by "nearer to him" and "nearer to her"? If he can watch it but she cannot, it is nearer to him. If she can watch it but he cannot, it is nearer to her. If both can watch it or neither can, it is midway between them.

CHAPTER V

1. If a man betrothes a woman with anything forbidden for benefit, as for instance, leaven during Passover, or meat cooked with milk, or anything similar of the other things forbidden for benefit, she is not betrothed. Even if the article is forbidden for benefit only by Scribal law, as for example, leaven during the sixth hour of the fourteenth day of the month of Nisan, the betrothal is invalid.

2. If a man transgresses and sells something forbidden for benefit, and then betrothes a woman with the proceeds thereof, the betrothal is valid, except in the case of an object of idol worship, where, if a man betrothes a woman with its proceeds, she is not betrothed, because the money realized from the sale of an object of idol worship is just as forbidden for benefit as the object itself.

If one betrothes a woman with the dung of heifers devoted to idol worship, she is likewise not betrothed, because benefit from anything at all connected with the worship of idols is forbidden, as it is said, *and there shall cleave nought of the devoted thing to thy hands* (Deut. 13:18).

If, however, one betrothes a woman with the dung of an ox condemned to death by stoning, the betrothal is valid, for even though any benefit from that ox itself is forbidden, benefit from the dung thereof is not forbidden, because it is not accounted as of any importance over against the ox.

3. If one betrothes a woman with the produce of the Sabbatical year, the ashes of the Red Heifer, or water poured into a vessel for use as water of purification, the betrothal is valid.

If one betrothes a woman with an object dedicated to the repair of the Temple, the rule is as follows: If he does so in error, the betrothal is valid, but he must repay to the Temple the value of the object plus a fifth thereof, and he must bring his guilt offering like anyone guilty of erroneously misusing sacred property. If he deliberately betrothes a woman therewith, the betrothal is invalid.

4. If a man betrothes a woman with the second tithe, whether unwittingly or wittingly, she is not betrothed, because he is forbidden to use it for any purpose of his own before it is rendered profane, as it is said of the tithe, *It is holy unto the Lord* (Lev. 27:30).

5. If a priest betrothes a woman with his portion of the sacred offerings, whether those of the higher degree or those of the lesser degree of sanctity, the betrothal is invalid, because these are permitted to be used only for consumption.

If, however, a priest betrothes a woman with his share of the great heave offering, of the heave offering of the tithe, or of the first fruits; and similarly, if a Levite betrothes a woman with the first tithe, or if an Israelite betrothes a woman with the tithe of the poor, the betrothal is valid.

6. The gifts due to a priest that have not yet been separated are accounted as if they had already been separated. Therefore, if an Israelite inherits from his maternal grandfather, a priest, produce from which the priest's share has not as yet been given, and thereupon separates from it the heave offering and the tithe, these have the same status as heave offerings and tithes that have fallen to him as an inheritance from his maternal grandfather. Consequently, if he betrothes a woman with them, the betrothal is valid, for though they are not permitted to him for his own consumption, he may sell them to someone who is permitted to eat them.

If, however, an Israelite betrothes a woman with the heave offering which he had separated from his own granary, the betrothal is invalid, because he may not sell it; his only benefit

therefrom is his right to give it to whichsoever priest he chooses, and this goodwill benefit is not equivalent to monetary benefit.

7. If a man betrothes a woman with the proceeds of robbery, theft, or violence, the rule is as follows: If the owners have given up hope of recovery, and it is known that the culprit has acquired title to the object because of their despair of recovery, the betrothal is valid; if not, it is invalid.

8. If a man enters the house of another and seizes a utensil, an article of food, or the like, and betrothes a woman therewith, and if then the householder appears, she is not betrothed, even if the owner says to him, "Why did you not give her this article, which is better than the one you have given her?" For he has spoken thus to him merely in order not to embarrass him. Therefore, inasmuch as the man has performed the betrothal with his fellow's money without the latter's consent, the money constitutes the proceeds of robbery, and the betrothal therewith is invalid.

If, however, he betrothes her with an article about which the owner is not particular, as for example, a date or a nut, the betrothal is in doubt.

9. If a man who owns merchandise in partnership with another divides it without his partner's knowledge, and then betrothes a woman with his own share, the betrothal is invalid, because such a division requires an appraisal by the court, and he has no right to take what he pleases and leave what he pleases.

10. If he robs the woman, or steals from her, or seizes anything from her by violence, and then turns around and betrothes her with the very same article obtained from her by robbery, theft, or violence, saying to her, "Behold, thou art betrothed unto me with it," the rule is as follows: If prior to this there had been marriage negotiations between them, and if she takes the article and remains silent, the betrothal is valid. If no such negotiations had ever taken place, the betrothal is invalid, even if she

remains silent when he gives her the article as a token of betrothal. If, however, she says, "Yea," the betrothal is valid.

11. Similarly, if he deposits a bailment with her, saying to her, "Hold this bailment," and then turns around and says to her, "Behold, thou art betrothed unto me with it," the rule is as follows: If he says it to her before she takes the article, and she takes it and remains silent, the betrothal is valid. If she first takes the article as a bailment, and he thereupon says to her, "Behold, thou art betrothed unto me with it," and she then remains silent, nothing has taken place, because silence following payment of money signifies nothing. If, however, she says "Yea" after taking the article, the betrothal is valid.

12. If while repaying a debt owed to her, and before her receipt of the repayment, he says to her, "Behold, thou art betrothed unto me with it," and if she then accepts it and remains silent, the rule is as follows: If heretofore there had been marriage negotiations between them, the betrothal is valid. If no such negotiations had taken place, the betrothal is invalid, unless she says "Yea."

If after her acceptance of the repayment, he says to her, "Behold, thou art betrothed unto me with it," the betrothal is invalid, even if she answers "Yea," for nothing has passed into her hand from him, inasmuch as she has merely taken what was hers, and his debt has been canceled the moment she accepted repayment; consequently she cannot turn around and demand repayment of the same debt a second time.

13. If a man betrothes a woman by means of a monetary loan, the betrothal is invalid, even if the loan is secured by a document. How so? For example, if she owes him a denar, and if he says to her, "Behold, thou art betrothed unto me with the denar that thou owest me," the betrothal is invalid, because a monetary loan is negotiated for the purpose of expenditure; consequently there is no longer anything in existence to derive any benefit from, since she has already spent that denar, and his benefit therefrom is now past.

14. If the loan extended by him to her is secured by a pledge, and if he betrothes her with that loan and returns the pledge to her, the betrothal is valid, inasmuch as she now derives a benefit from that pledge, and thus he has made it possible for her to have that benefit.

15. If a man betrothes a woman with the benefit derived from a loan, the betrothal is valid. How so? If, for example, he lends her now two hundred zuz and says to her, "Behold, thou art betrothed unto me with the benefit derived from the extension of time that I will allow thee on this loan, namely, that it is to remain in thy hand for so-and-so many days, so that I will not demand it from thee until such-and-such a time," the betrothal is valid, because she now derives a benefit from the use of this loan until the end of the extension specified by him. It is forbidden to do this, however, because it is akin to usury.

My teachers have expounded the matter of benefits derived from a loan in a manner that is unworthy of consideration.

16. If he says to her, "Behold, thou art betrothed unto me with this pĕruṭah, and also with the debt that thou owest me," the betrothal is valid. Similarly, if he says to her, "with the loan that thou owest me, and also with this pĕruṭah," the betrothal is valid.

17. If a third person owes a debt to him, and he says to her in the presence of all three of them, "Behold, thou art betrothed unto me with the debt owed to me by this third person," the betrothal is valid.

18. If he betrothes her with a bailment that is in her custody, or with an article loaned by him to her, the betrothal is valid, provided that the bailment, or the object held on loan, or a pĕruṭah's worth of either one of them, is still in her possession.

19. If he says to her, "Behold, thou art betrothed unto me with the payment that will be due to me for my intercession with the governor in thy behalf," and if he does intercede in her behalf, with the result that the governor relents and does not

summon her, the betrothal is invalid, unless he gives her a pĕruṭah of his own. For the benefit that has accrued to her from his intercession is equivalent to a loan, and betrothal with a loan is invalid.

20. If he says to her, "Behold, thou art betrothed unto me with the work which I am to perform for thee," and he does perform it, the betrothal is invalid, unless he gives her a pĕruṭah of his own. For the laborer acquires title to his wages continuously from the beginning to the end: as he performs a portion of his task, he acquires title to the corresponding portion of his wages. It follows therefore that the sum total of the wages is like a loan owed by her to him, and betrothal with a loan is invalid.

21. If a woman says to A, "Give a denar to B as a gift, and I will become betrothed to you," and if A does give it to B and then says to her, "Behold, thou art betrothed unto me with the benefit derived from this gift, which I have made at thy bidding," the betrothal is valid. For even though nothing has reached her, she has derived a benefit from the fact that her will was done and that B did derive a benefit on her account.

Similarly, if she says to A, "Give a denar to B as a gift, and I will become betrothed to him," and if A does so, and then B says, "Behold thou art betrothed unto me with the benefit which thou hast derived from this gift received by me according to thy wish," the betrothal is valid.

22. If A says to her ,"Take this denar as a gift, and become betrothed to B," and if then B betrothes her by saying, "Behold, thou art betrothed unto me with the benefit that has come unto thee on my account," the betrothal is valid, even though B, who has performed the betrothal, has given her nothing.

If she says to A, "Take this denar as a gift, and I will become betrothed to you," and if he takes it, saying, "Behold, thou art betrothed unto me with the benefit derived by thee from my acceptance of thy gift," the rule is as follows: If he is an important person, the betrothal is valid, because she is benefited

by the fact that he has derived a benefit from her, and with this benefit derived by her she has caused him to acquire her.

23. If a man says to a woman, "Behold, thou art betrothed unto me with a denar, and here is this pledge to remain in thy hand until I give thee the denar," the betrothal is invalid, because no denar has reached her hand, nor was the pledge given to her to be her own.

If he holds a pledge as security for a debt owed to him by someone else, and he betrothes a woman with it, the betrothal is valid, even though the pledge is not his own, because the creditor acquires a limited title to the body of the pledge.

24. If a man says to a woman, "Behold, thou art betrothed unto me with this denar, on condition that thou returnest it to me," the betrothal is invalid, whether she returns the denar or not. For if she does not return it, the condition has not been fulfilled; and if she does return it, she has derived no benefit, because she has received nothing.

25. If he gives her a bundle of myrtle branches or something similar, and says to her, "Behold, thou art betrothed unto me with this," and she accepts it; and if, upon being told, "But is it not a fact that this is not worth a pĕruṭah?", he replies, "Let her then be betrothed with the four zuz that are concealed inside the bundle," the rule is as follows: If she then says, "Yea," the betrothal is valid; if she remains silent, she is not betrothed with this money, because silence after payment of money is of no avail; she is therefore merely doubtfully betrothed on account of the bundle, which may possibly be worth a pĕruṭah in some other locality.

26. If a man says to a woman, "Be thou betrothed unto me with this date, be thou betrothed unto me with that one, be thou betrothed unto me with the other one," the rule is as follows: If one of these dates is worth a pĕruṭah, the betrothal is valid; if not, the validity of the betrothal is in doubt, for it is possible that one date is worth a pĕruṭah in some other place.

27. If he says to her, "Be thou betrothed unto me with this date, and with that one, and with the other one," the rule is as follows: If all three together are worth a pĕruṭah, the betrothal is valid; if not, the validity of the betrothal is in doubt.

If she has been eating them one after another, the rule is as follows: If the last date is worth a pĕruṭah, the betrothal is valid; if not, the betrothal has only doubtful validity, because the dates consumed by her have the status of a loan, and betrothal with a loan is invalid, so that the betrothal is contracted only with the last date.

28. If a man says to a woman, "Behold, thou art betrothed unto me with these dates," the rule is as follows: If together they are worth a pĕruṭah, the betrothal is valid, even if she has been eating them one after another, because she has been eating what is already hers, and she is therefore betrothed.

29. If a man says to a woman, "Behold, thou art betrothed unto me with this cup," the rule is as follows: If the cup is filled with water, she becomes betrothed both with the cup and with its contents: if it is filled with wine, she becomes betrothed with the cup, but not with its contents; if it is filled with oil, she becomes betrothed with the contents, but not with the cup.

Therefore, if the oil is not worth a pĕruṭah, the validity of the betrothal is in doubt; if the oil is worth a pĕruṭah, the betrothal is assuredly valid, and no attention need be paid to the cup.

CHAPTER VI

1. If a man betrothes a woman conditionally, the rule is as follows: If the condition is fulfilled, the betrothal is valid; if not, it is not valid; and it does not make any difference whether the condition favors the man or the woman.

Any condition whatsoever, whether it affects betrothal or

divorce, buying or selling, or any other money matter, must satisfy four requirements.

2. The four requirements for any condition are the following: it must specify both alternatives; the positive alternative must precede the negative one; the condition must precede the action; the condition must be possible of fulfillment.

If one of these requirements is missing, the condition is null and void, and it is as if no condition whatsoever had been stipulated—in that case the woman is betrothed or divorced immediately, and the purchase or gift becomes effective immediately, as if no condition at all had been stipulated, inasmuch as the condition lacks one of the four requirements.

3. How so? If a man says to a woman, "If thou wilt pay me two hundred zuz, behold, thou art betrothed unto me with this denar; if thou wilt not pay them to me, thou wilt not be betrothed," and if after stipulating this condition he gives her the denar, the condition is valid, and she is conditionally betrothed. Therefore, if she then pays him the two hundred zuz, the betrothal is valid; if she does not, the betrothal is invalid.

4. If, however, he says to her, "Behold, thou art betrothed unto me with this denar," and hands her the denar; and if thereupon he adds the condition by saying, "If thou wilt pay me two hundred zuz, thou wilt be betrothed unto me; if thou wilt not pay them to me, thou wilt not be betrothed," the condition is null and void, because he has performed the action first by handing her the token of betrothal, and has only thereafter specified the condition. The betrothal is therefore valid immediately, and she is not obligated to pay him anything, even if the condition was stipulated within the time needed to make an utterance.

5. Similarly, if he says to her, "If thou wilt pay me two hundred zuz, behold, thou art betrothed unto me with this denar," and then hands her the denar, the condition is null and void, because he did not specify both alternatives, since he did not say to her further, "and if thou wilt not pay, thou wilt not be

betrothed"; she therefore becomes betrothed immediately, and need not pay him anything.

6. Likewise, if he says to her, "If thou wilt not pay me two hunderd zuz, thou wilt not be betrothed unto me; but if thou wilt pay me two hundred zuz, behold, thou art betrothed unto me with this denar," and then hands her the denar, the condition is null and void, because he set forth the negative alternative before the positive one; she therefore becomes betrothed immediately, and need not pay him anything.

7. Similarly, if he says to her, "If thou wilt ascend to heaven," or "descend into the abyss, behold, thou art betrothed unto me with this denar; and if thou wilt not ascend to heaven," or "descend into the abyss, thou wilt not be betrothed," and then hands her the denar, the condition is null and void, and she becomes betrothed immediately. For it is a known fact that it is impossible for her to fulfill this condition, and he is therefore merely speaking to her in a diverting manner by way of ridicule and irony.

8. If he stipulates a condition that is possible of fulfillment but whose performance is forbidden by the Torah—for example, if he says to a woman, "If thou wilt eat fat," or "blood, behold thou art betrothed unto me with this denar; and if thou wilt not eat it, thou wilt not be betrothed"; or "if you will eat swine's flesh, here is your get; and if you will not eat it, there will be no get"—and if after stipulating the condition he hands her the denar, or the get, the condition is valid. If she then transgresses and eats any of these, she is betrothed or divorced, and if she does not eat it, she is not betrothed nor divorced; and it cannot be said in such a case, "He has stipulated a condition that is contrary to that which is written in the Torah," because she can choose not to eat and not to become betrothed or divorced.

9. To what cases did the Sages apply the principle "A condition whose performance is forbidden by the Torah is null and void, except in money matters, where it is valid?" To a case

like the following: If a man betrothes or divorces a woman, or gives something as a gift, or sells it, on condition that he himself should thereby acquire title to something that the Torah does not entitle him to, and on the contrary, denies it to him, or that he should be released from something which the Torah makes obligatory upon him, he should be told, "Your condition is null and void, and your actions are now fully valid; therefore you are not free from the obligation imposed upon you by the Torah, nor can you acquire title to that which is denied to you by the Torah."

10. How so? If, for example, a man betrothes a woman on condition that he is to be free from the obligation of providing her with food, raiment, and conjugal rights, he should be told, "Your stipulation concerning food and raiment, which are money matters, is valid, but as for your stipulation regarding conjugal rights, it is null and void, because this latter duty is imposed upon you by the Torah. This woman is therefore now betrothed, and you owe her her conjugal rights, and therefore you cannot free yourself from them by means of your stipulation." The same applies to all similar cases.

Similarly, if one betrothes a comely captive woman, with the stipulation that he is to be entitled to treat her as a bondswoman, the betrothal is valid, but he may not treat her as a bondswoman, inasmuch as the Torah has forbidden him to enslave her after he has had intercourse with her. Thus he may not acquire by means of his condition something which is forbidden to him by the Torah; rather, it is his condition that is null and void. The same applies to all similar cases.

11. If, while betrothing or divorcing a woman, a man stipulates that she is to have intercourse with her father, her brother, her son, or any similar person, it is the same as if he had stipulated that she is to ascend to heaven or descend into the abyss, and his condition is null and void. For it is not in her power to cause others to transgress by having intercourse with a woman of the forbidden degrees, so that he has imposed upon her a con-

dition that is beyond her power to fulfill. The same applies to all similar cases.

12. If, however, A stipulates that "B is to give me his courtyard," or that "B is to give his daughter in marriage to my son," or something similar, A's condition is valid, inasmuch as it is within her power to fulfill it by paying B a large sum of money to induce him to give his courtyard to A or to give his daughter in marriage to A's son, since no transgression is involved in these actions. The same applies to all similar cases.

13. Keep these matters concerning conditions constantly before your eyes, and wherever you find the statement "If one betrothes a woman on such-and-such a condition," or "If one grants a get on such-and-such a condition," or "If one sells, or gives a gift, on condition," you will know that the condition must satisfy the four requirements aforementioned, so that we will have no need to explain them again in each place; and that if one of the requirements is missing, there is no condition.

14. Some later Geonim maintain that the obligation to state both alternatives of the condition applies only to divorce and betrothal, and not to money matters. This view need not be relied upon, because the statement of both alternatives, together with the rest of the four requirements, was derived by the Sages from the case of the Children of Gad and the Children of Reuben, where it is said; *If the Children of Gad will pass . . . over* etc., *but if they will not pass over,* etc. (Num. 32:29–30), and this condition refers neither to divorce nor to betrothal. So also have ruled the greatest of the earlier Geonim, and that is the proper rule to follow.

15. If a man betrothes a woman conditionally, once the condition is fulfilled, the betrothal becomes valid from the moment the condition is fulfilled, and not retroactively from the moment of betrothal. How so? If A says to a woman, "If I pay thee two hundred zuz this year, behold, thou art betrothed unto me with this denar; and if I do not pay thee, thou wilt not be betrothed";

and if he then hands her the denar in the month of Nisan, and pays her the stipulated two hundred zuz in the month of Elul, she is betrothed as of the month of Elul. Therefore, if B betrothes her before A's condition has been fulfilled, she is betrothed to B.

The same rule applies also to divorce and money matters: it is at the moment when the condition is fulfilled that the get, or the sale, or the gift becomes valid.

16. When does this apply? When the condition does not contain the stipulation, "as of now." If, however, A says to a woman, "Behold, thou art betrothed unto me as of now with this denar, if I pay thee two hundred zuz," and if later on he pays her two hundred zuz, she is betrothed retroactively from the moment of the betrothal, even though the condition has not been fulfilled until long afterwards.

Therefore, if B betrothes her before the condition is fulfilled, B's betrothal is not valid.

The same rule applies to divorce and money matters.

17. Whosoever says "as of now" need not state both alternatives nor make the condition precede the action; rather his stipulation is valid even if the action is stated first. The condition stipulated, however, must be possible of fulfillment. If the condition is impossible of fulfillment, it is as if he had spoken in a diverting manner, and there is no stipulation.

Whosoever says "provided that" is the same as if he had said "as of now," and he need not state both alternatives or make the condition precede the action.

18. How so? If a man says to a woman, "Behold, thou art betrothed unto me, provided that thou payest me two hundred zuz," or "Here is your get, provided that you pay me two hundred zuz," or "Here is this courtyard, given to you as a gift, provided that you pay me two hundred zuz"—in all these instances the condition is valid, and she is betrothed, or divorced, or has acquired title to the courtyard, and must then pay the two hundred zuz; if she does not, she is neither betrothed, nor

divorced, nor entitled to the courtyard. Even though he failed to state both alternatives, and made the action precede the condition, by handing her the token of betrothal or the get, or by letting her take title to the courtyard, before adding his condition, nevertheless once the condition is fulfilled, she acquires title to the courtyard, or becomes betrothed or divorced, from the first moment when the action is performed, as if there had been no condition at all.

CHAPTER VII

1. If a man says to a woman, "Behold, thou art betrothed unto me, provided that my father consents," the rule is as follows: If the father consents, she is betrothed. If the father does not consent, or is silent, or dies before hearing of the matter, the betrothal is invalid.

If he says to her, "provided that my father does not disapprove," and the father hears of it and disapproves, the betrothal is invalid. If the father does not disapprove, or dies, the betrothal is valid. If the son dies, and the father hears of the betrothal afterwards, he should be instructed to disapprove, in order that the betrothal should be annulled and the woman released from liability to levirate marriage.

2. If a man says to a woman, "Behold, thou art betrothed unto me with this, provided that I have two hundred zuz," or "one *ḳor* of land," the rule is as follows: If witnesses testify that he owns such property, the betrothal is valid; if they testify that he does not, the validity of the betrothal is in doubt, for it is possible that he does in fact own such property, and says "I do not own it" in order to cause her harm.

3. If a man says to a woman, "Behold, thou art betrothed unto me with this, provided that I have two hundred zuz," or "one kor of land, in such-and-such a place," the rule is as follows: If he does own such property in that same place, the betrothal is valid. If he does not own it in that place, the validity of her

betrothal is in doubt, for it is possible that he does own it there and intends to cause her harm.

4. If a man says to a woman, "Behold, thou art betrothed unto me, provided that I show thee two hundred zuz or a kor of land," the betrothal is valid, and he must show these to her.

If he shows her the money, but in the possession of someone else, or if he shows her a kor of land but in someone else's field, the betrothal is invalid, until he shows her these in his own possession. If he obtains the money on loan or in partnership, or if he rents the land or holds it in tenancy, and shows these to her, the betrothal is invalid, until he shows her these in his own possession, because the meaning of "that I show thee" is that "this thing I told thee that I will show thee it to be my own."

5. If he owns a kor of land that has in it depressions ten handbreadths deep, or elevations ten handbreadths high, the rule is as follows: If the depressions are full of water, they are regarded the same as elevations and are not included in the measurement of the land, because they are unfit for cultivation. If they are not filled with water, they should be included in the measurement, because they are fit for cultivation.

6. If a man says to a woman, "Behold, thou art betrothed unto me, provided that thou art not under a vow," and she is found to be under one of three vows; namely that she is not to eat meat, that she is not to drink wine, and that she is not to adorn herself with colored garments, the betrothal is invalid.

If she is found to be under any vow other than these, the betrothal is valid, even if he says, "I am particular about this kind of vow also."

If, however, he says to her, "provided that thou art not under any kind of vow," the betrothal is not valid, even if she had vowed no more than that she will not eat of the fruit of the carob tree.

7. If a man says to a woman, "Behold, thou art betrothed unto me, provided that thou dost not have any bodily defects," and

one of the defects that disqualify women is found in her, the betrothal is invalid.

If any defect other than these is found in her, the betrothal is valid, even if the man says, "I am particular about this one also."

And what are the defects that disqualify women? All the defects that disqualify priests disqualify also women. In the Laws Concerning Entrance into the Sanctuary, all the defects disqualifying priests will be explained.

In the case of women the following defects are added: unpleasant body odor, excessive perspiration, offensive breath, a thick voice, breasts larger by a handbreadth than those of other women, a handbreadth's space between one breast and the other, a dogbite healed into a rough scar, and a mole on the forehead, even if very small, close to the hair of the head, and growing no hair. This is the kind of mole that disqualifies women but not priests.

If the mole grows hair and is located on any other part of the face, or if the mole is as large as an *'issar,* even if it grows no hair, it is considered a defect in both priests and women.

8. If a man betrothes a woman unconditionally, and if thereupon one of the defects that disqualify women is found in her, or she is found to be subject to one of the three vows, the validity of the betrothal is in doubt.

If he betrothes her on the understanding that she is subject to no vow, and she is so subject, but betakes herself to a Sage who absolves her from it, the betrothal is valid.

9. If he betrothes her on the understanding that she has no bodily defects, and she does have such defects, but then betakes herself to a physician and is cured by him, the betrothal is invalid.

If, however, he effects the betrothal on the understanding that he himself is not subject to any vow or that he has no bodily defects, and is in fact subject to a vow or has bodily defects, but then betakes himself to a Sage who absolves him, or to a physician who cures him, the betrothal is valid, for no disgrace attaches to a man because of defects that have been cured, and a woman is not likely to be particular about it.

10. If a man says to a woman, "Behold, thou art betrothed unto me with this, on the understanding that I will pay thee two hundred zuz between now and thirty days hence," the rule is as follows: If he pays her within the thirty days, the betrothal is valid; if the thirty days pass and he fails to pay her, the betrothal is invalid.

If he says to her, "Behold, thou art betrothed unto me with these two hundred zuz thirty days hence," the betrothal becomes valid after the lapse of the thirty days, even if the money is used up within these thirty days. If he or she retracts the betrothal within these thirty days, the betrothal is invalid.

11. If B comes along and betrothes her within the thirty days, she is permanently betrothed to B, because at the time B betrothed her, A's betrothal had not yet taken effect; therefore B's betrothal is effective, making her a married woman. After the thirty days, when A's betrothal is about to take effect, she is already a married woman, and thus it is as if A was about to betroth a married woman who is no longer subject to betrothal.

12. If A says to a woman, "Behold, thou art betrothed unto me as of now, and after thirty days, with this denar," and if then B comes along and betrothes her within these thirty days, she is doubtfully betrothed to both A and B. Therefore, both must give her a get, either within these thirty days or thereafter.

If A says to her, "Behold, thou art betrothed unto me as of now, and after thirty days," and if then B comes along and says, "Behold, thou art betrothed unto me as of now, and after twenty days," and if thereupon C comes along and says to her, "Behold, thou art betrothed unto me as of now, and after ten days"—even if a hundred men do so one after another, the betrothal of each man takes effect, and she requires a get from each one of them, because she is doubtfully betrothed to all of them.

13. If a man says to a woman, "Behold, thou art betrothed unto me, with the exception of So-and-so"—that is to say, that she is not to become forbidden to So-and-so, meaning that she is to as-

sume the status of a married woman with regard to all men in the world excepting So-and-so, with regard to whom she is to retain her standing as an unmarried woman—the betrothal has doubtful validity.

If, however, he says to her, "Behold, thou art betrothed unto me, on the understanding that thou art to remain permitted to So-and-so," the betrothal is valid, and she is forbidden to So-and-so as she is to all other men, because he has stipulated a condition that is impossible of fulfillment.

14. If a man gives two pĕruṭah to a woman and says to her, "Behold, thou art betrothed unto me today with one of these, and with the other after I shall have divorced thee," she is validly betrothed, and after he divorces her she is betrothed to him again until he divorces her once more out of the betrothal contracted with the second pĕruṭah.

If, however, he says to her, "Behold, thou art betrothed unto me as soon as I become a proselyte," or "as soon as thou becomest a proselyte," or "as soon as I am manumitted," or "as soon as thou art manumitted," or "upon thy husband's death," or "upon thy sister's death," the betrothal is invalid, because he cannot now contract a valid betrothal with her.

15. If a man says to a *yĕḇamah,* "Behold, thou art betrothed unto me with this token, after thou hast performed ḥălişah for thy levir," the betrothal is valid, inasmuch as had he betrothed her now, the betrothal would have doubtful validity.

16. If A says to B, "Should your wife bear a female child, let it be betrothed to me with this," he has said nothing. If, however, B's wife is with child, and the growth of the embryo is evident, the betrothal is valid.

It would appear to me, however, that A should betroth the child again after her birth, through the agency of her father, so that he might wed her with a betrothal that is free from any taint.

17. If a man says to a woman, "Behold, thou art betrothed unto me with one hundred denar," once he pays her even one

denar, she is betrothed as soon as she accepts that denar, provided that he subsequently pays her the rest. For this is the same as if he had said to her, "Behold, thou art betrothed unto me with this denar, on the understanding that I will pay thee a total of one hundred denar," in which case she becomes betrothed to him as of now.

When does this apply? When he says to her, "with one hundred denar," without further specification. If, however, he says specifically, "Behold, thou art betrothed unto me with these one hundred denar," and commences to count them into her hand, she is not betrothed until he has paid her the full one hundred denar; and they both may retract even at the last denar.

Likewise, if it is found that a mina is short one denar, or that one of the denar is a copper denar, the betrothal is invalid.

If one of the denar is found to be underweight, the rule is as follows: If she can spend it, though only with an effort, he must exchange it; if she cannot spend it, the betrothal is invalid.

18. If he says to her, "Behold, thou art betrothed unto me with these garments which are worth fifty denar," these being garments of silk or similar fabric much coveted by women, the rule is as follows: If they are worth fifty denar, she is betrothed the moment she accepts them; there is no need to have them first appraised in the market, and only then declare the betrothal valid, on the ground that she must first feel confident of their value; rather, inasmuch as they are worth approximately what he had told her, she is betrothed from the first moment. If they are not worth the stated amount, the betrothal is invalid.

19. If a man and a woman had been discussing matters concerning betrothal, he saying, "I will betroth you with one hundred denar," and she replying, "I will not be betrothed to you except with two hundred denar," and if then he goes home and she goes home; and if thereafter they summon each other and effect the betrothal without specifying the amount of the token, the rule is as follows: If it is the man who has summoned the woman, her terms must be met; if it is the woman who has summoned the man, his terms must prevail.

20. If a man appoints an agent to betroth a woman for him, and the agent goes forth and effects a conditional betrothal, the betrothal is invalid.

Likewise, if he instructs the agent to effect a conditional betrothal, and the agent goes forth and betrothes her without any condition, or with a different or modified condition, the betrothal is invalid.

21. If he says to the agent," "Betroth her to me in such-and-such a place," and the agent goes forth and betrothes her in another place, the betrothal is invalid.

If he says, "Betroth her to me—she is now in such-and-such a place," and the agent goes forth and betrothes her in another place, the betrothal is valid, because the reference to the place was merely by way of information.

Likewise, if the woman says to her agent, "Accept my betrothal in such-and-such a place," and he goes forth and accepts it in another place, the betrothal is invalid.

If, however, she says, "My husband-to-be is now in such-and-such a place," and the agent accepts the betrothal in her behalf in another place, the betrothal is valid, because the reference to the place was by way of mere information.

22. If a man betrothes a woman, and if immediately thereafter either he or she retracts the betrothal, the retraction is ineffective, even if they do so within the time needed to make an utterance, and the betrothal remains valid.

23. If a man betrothes a woman conditionally, and after several days changes his mind and cancels the condition, the condition is null and void, even if he cancels it privately between him and her, and not in the presence of witnesses, and therefore she is now betrothed without any condition at all.

Similarly, if the condition is stipulated by the woman, and she subsequently cancels it privately between him and her, the condition is null and void.

Therefore, if a man betrothes a woman conditionally, and

then weds her or has intercourse with her without any conditions, she requires a get even if the condition has not been fulfilled, since he may have cancelled the condition when he had intercourse with her or wedded her.

Likewise, if a man betrothes a woman with less than a pĕruṭah or with a loan, and then has intercourse with her without any condition and in the presence of witnesses, she requires a get, because his reliance is upon this intercourse as the token of marriage, rather than upon the defective betrothal. For the presumption is that no Israelite of good character will make his intercourse with a woman an act of harlotry, and in this case he is surely able to make it an act of observance of a commandment.

CHAPTER VIII

1. If a man says to a woman, "Behold, thou art betrothed unto me with this cup of wine," and it is found to be honey; or "with this cup of honey," and it is found to be wine; or "with this silver denar," and it is found to be gold; or "with this gold denar," and it is found to be silver; or if he says, "on the understanding that I am a priest," and he is found to be a Levite; or "on the understanding that I am a Levite," and he is found to be a priest: or "that I am a Nathin," and he is found to be a bastard; or "that I am a bastard," and he is found to be a Nathin; or "that I am a town dweller," and he is found to be a city dweller; or "that I am a city dweller," and he is found to be a town dweller; or "on the understanding that I am poor," and he is found to be rich; "that I am rich," and he is found to be poor; or "on the understanding that my house is near the bathhouse," and it is found to be far; or "on the understanding that it is far," and it is found to be near; or "on the understanding that I have a bondswoman or a daughter who is a hairdresser or a baker," and it is found that he does not; or on the understanding that he does not have either of these, and he does; or "on the understanding that I already have a wife and children," and he does not; or that he

does not have them, and he does—in all these and similar cases the betrothal is not valid. The same rule applies if it is she who has deceived him.

2. In all these cases the same rule applies even if the woman says, "In my heart I intended to be betrothed to him, even though he has deceived me, and the matter is not as he had said"; and similarly, even if the man says, "In my heart I intended to betroth her, even though she has deceived me," the betrothal is invalid, because things intended in one's heart are immaterial.

3. If a man says to a woman, "Behold, thou art betrothed unto me on the understanding that I am a perfumer," and he is found to be both a perfumer and a tanner; or if he says, "on the understanding that I am a town dweller," and he is found to be a resident of both a town and a city; or "on the understanding that my name is Joseph," and it is found to be both Joseph and Simeon, the betrothal is valid.

If, however, he says, "on the understanding that my name is none other than Joseph," and it is found that he is called both Joseph and Simeon; or "on the understanding that my sole profession is perfumery," and he is found to be both a perfumer and a tanner; or "on the understanding that I am exclusively a townsman," and he is found to be the resident of both a town and a city, the betrothal is invalid.

4. If a man says to a woman, "Behold, thou art betrothed unto me on the understanding that I can read," he must be able to read both out of the Torah and out of its Aramaic version by Onkelos the proselyte.

If he says, "on the understanding that I am a reader," he must be able to read out of the Torah, the Prophets, and the Writings with appropriate exactitude.

If he says, "on the understanding that I can read Mishnah," he must know how to read out of the Mishnah. If he says, "on the understanding that I am a reader in traditional lore," he must know how to read out of the Mishnah, Sifra, Sifre, and the Tosefta of Rabbi Ḥiyya.

5. If he says, "on the understanding that I am a disciple," it cannot be said that he must be like Ben 'Azzai or Ben Zoma; it is sufficient if, when asked about something in his studies, he is able to supply the answer, even if it is one of the regulations concerning the festivals, meaning the simple matters which are taught to the public just before the festival, so that the people might be familiar with them.

If he says, "on the understanding that I am a Sage," it cannot be said that he must be like Rabbi 'Aḳiba or his colleagues; it is sufficient if, when asked about a matter of learning in relation to any subject, he is able to supply the answer.

If he says, "on the understanding that I am a mighty man," it cannot be said that he must be like Abner the son of Ner or like Joab; it is sufficient if his companions stand in awe of him because of his might.

If he says, "on the understanding that I am wealthy," it cannot be said that he must be as rich as Rabbi Eleazar ben Ḥarsom or Rabbi Eleazar ben Azariah; it is sufficient if his fellow townsmen honor him for his wealth.

If he says, "on the understanding that I am a righteous man," she is doubtfully betrothed, even if he is thoroughly wicked, for it is possible that he has thoughts of repentance in his heart.

If he says, "on the understanding that I am a wicked man," she is doubtfully betrothed, even if he is perfectly righteous, for he may have had thoughts of idolatry in his heart, seeing that the sin of idolatry is so grievous that no sooner one so much as has a thought of it in his heart, than he forthwith becomes a wicked person, as it is said, *lest your heart be deceived* (Deut. 11:16), and it is also said, *that I may take the house of Israel in their own heart* (Ezek. 14:5).

6. If a man, having betrothed a woman, says, "I thought that she was of priestly descent, but she is really of Levitic descent"; or, "that she was of Levitic descent, but she is really of priestly descent"; or, "that she was poor, but she is in fact wealthy"; or, "that she was wealthy, but she is really poor," the betrothal is valid, because she herself did not deceive him.

Similarly, if she says, "I thought that he was a priest, but he is really a Levite"; or, "that he was a Levite, but he is really a priest"; or "that he was wealthy, but he is in fact poor"; or "that he was poor, but he is really wealthy," the betrothal is valid, because he himself did not deceive her.

CHAPTER IX

1. If a man betrothes simultaneously two women whom he is forbidden to marry because they are of the prohibited degrees, their betrothal is invalid.

How so? If, for example, he betrothes at the same time a woman and her daughter, or two sisters, neither one is validly betrothed.

2. If he betrothes several women at the same time, by saying, "Behold, all of you are betrothed unto me," and among them there are two sisters, or a woman and her daughter, or the like, not one of them is validly betrothed.

If he says to them, "Those among you who are eligible for marriage with me are betrothed unto me," all of them, with the exception of the sisters, the woman and her daughter, and similar cases, are betrothed to him.

Similarly, if he says to them, "All of you are betrothed unto me," and among them there is a bondswoman, or a woman of the forbidden degrees—for example, a married woman, his daughter, his sister, or the like—none of them is validly betrothed.

If he says, however, "The ones among you who are eligible to be married to me are to be betrothed unto me," all of them are betrothed to him, with the exception of the woman upon whom betrothal takes no effect.

3. If a man says to two sisters, "Behold, one of you is betrothed unto me with this," and gives both of them a pĕruṭah, or one of them accepts it through the hand of the other; and similarly, if

a man says to their father, "One of your daughters is betrothed unto me," and the father accepts the token of her betrothal, all of them require a get from him, and he is forbidden to consummate the marriage with any one of them. Because even though it is not possible to consummate the marriage with any one of them, nevertheless the betrothal takes effect.

4. If A appoints B as agent to betroth a certain woman to him, and B goes forth and does so, and thereupon B on his own initiative betrothes to A also her mother, her daughter, or her sister, and it is not known which one of them was betrothed first, both require a get, and are forbidden to A.

Similarly, if a woman appoints an agent to accept a betrothal in her behalf, and he goes forth and does so, while in the meantime she proceeds to have herself betrothed to another man, and it is not known which betrothal took place first, both men must give her a get. Or, if the two men agree, one of them may give her a get and the other may then consummate the marriage.

5. When does this apply? When the second bridegroom is not related to the first. If he is, and the agent betrothes her, for example, to the father, while she has herself betrothed to the son, brother, or some similar person, both must give her a get, and she is forbidden to both.

6. If A says to his agent, B, "Go forth and betroth a woman to me," and B thereupon dies, A not knowing whether B had or had not betrothed the woman to him, the presumption is that B did betroth her, because it is generally presumed that an agent has executed his commission. Since, however, it is not known which woman B had betrothed to A, the latter is forbidden to marry any woman who has relatives that would be of forbidden degree to her husband, for example a woman who has a daughter, a mother, a sister, or the like. For should you say, let A marry the woman So-an-so, it is possible that B had betrothed in A's behalf her mother, her sister, or her daughter. A is permitted, however, to marry a woman who has no such relatives.

If the woman has a relative, such as a mother, a sister, or the like, but this relative was married at the time of B's appointment as agent, A may marry the woman, even if her relative was divorced before B's death, and it cannot be said, perchance B had betrothed in A's behalf this relative after her divorce. Because at the time of B's appointment as agent this relative was not eligible for marriage to A, and no man appoints an agent to betroth to him any woman but one that he may marry at the time of the agent's appointment.

7. If A, who has five sons, all of whom have appointed him as their agent in order to betroth a woman to each one of them, says to B, who has five daughters, "One of your daughters is betrothed unto one of my sons," and B accepts the token of betrothal, each one of the daughters requires five gets from all of the brothers, seeing that all of the latter have authorized A to betroth a woman to them.

If one of the sons dies, each daughter requires four gets, as well as a ḥălişah from one of the surviving brothers.

8. If a father has both a minor or maiden daughter who is still under his authority, and a daughter who has come of age and has authorized him to have her betrothed; and if he has his daughter betrothed to a man without specifying which of the two is meant, the one who has come of age is not included, unless he says explicitly, "My daughter, who has come of age, has appointed me as her agent." Therefore the daughter who has come of age is not betrothed, but her sister is.

9. If a man has two sets of daughters by two wives, and all are still under his authority, and if he betrothes one of them by saying to the husband at the betrothal, "I betroth unto you my eldest daughter," all are free to marry other men, with the exception of the eldest of the older set, who alone is validly betrothed. This is so even though it is possible to say, perchance what he meant was the eldest of the older set, or the eldest of the younger set, or the youngest of the older set who is older than the eldest of the younger set.

Similarly, if he betrothes his youngest daughter, all are free to marry other men, with the exception of the youngest of the younger set, who alone is validly betrothed. This is so even though it is possible to say, perchance he meant the youngest of the younger set, or the youngest of the older set, or the eldest of the younger set who is younger than the youngest of the older set. For the meaning of "eldest daughter" is one who is older than any one of her sisters, and the meaning of "youngest daughter" is one who is younger than any one of her sisters.

10. A father is to be believed when he says about his daughter,, before she comes of age, that she is betrothed, and he thereby makes her forbidden to all other men.

11. If a father says, "I had my daughter betrothed, but I do not know to whom," she is forever forbidden to all men, until such a time as the father may say, "It has now come to my knowledge that I had her betrothed to So-and-so," and then she requires a get from that man alone. This applies even if the father has found it out after the daughter had come of age.

12. If the father says, "I do not know to whom I had her betrothed," and then a man comes forth and says, "It is I who had betrothed her," he is to be believed even to the extent of consummating the marriage, and no other betrothal is necessary.

13. If two men come forth, each claiming that he had betrothed her, both must give her a get, or, if they are agreeable, one may give her a get, and the other may then consummate the marriage.

If after the consummation of the marriage another man comes forth and says, "I am the one who had betrothed her," he is not to be believed, and he does not thereby make her forbidden to her husband.

14. If a woman says, "I was betrothed, but I do not know to whom," and thereupon a man comes forth and says, "I am the one who had betrothed you," he is to be believed insofar as he must give her a get, and she is then permitted to any man but

him. He is not, however, to be believed insofar as consummation of the marriage is concerned—perchance he has been overcome by his passion, and she is leading him on in order to make herself permitted to him.

15. If a man says to a woman, "I betrothed you," and she says, "You did not betroth me," he is forbidden to her kinswomen, but she is permitted to his kinsmen.

If the woman says to the man," You betrothed me," and he says, "I did not betroth you," he is permitted to her kinswomen, but she is forbidden to his kinsmen.

If the man says to the woman, "I betrothed you," and she says, "You betrothed not me but my daughter," he is forbidden to the kinswomen of the mother, but she is permitted to his kinsmen; on the other hand, he is permitted to the kinswomen of the daughter, and the daughter is permitted to his kinsmen.

If he says, "I betrothed your daughter," and she says, "You betrothed not her but me," he is forbidden to the kinswomen of the daughter, but the daughter is permitted to his kinsmen; on the other hand, he is permitted to the kinswomen of the mother but the mother is forbidden to his kinsmen.

16. In all claims of betrothal, the rule applies only if the claimant pleads that the bethrothal was performed in the presence of witnesses, and that the witnesses had gone away to another country or had died. If, however, the claimants admit that the betrothal was without witnesses, there is no betrothal, as we have explained.

In all cases where a woman says to a man, "You betrothed me," and he says, "I did not betroth you," he should be requested to write a get for her, in order to make her permitted to any other man, inasmuch as he suffers no loss thereby. But if he gives her the get on his own initiative, he must be compelled to pay her the amount of her kĕṯubbah.

17. If a man appoints an agent to betroth a woman to him, and the agent goes forth and betrothes her to himself, she is

betrothed to the agent. It is forbidden, however, to do this, and he who does such a thing, or anything similar to it, in other matters involving buying and selling, is called a wicked person.

18. If a man appoints an agent to betroth a woman to him, and the agent goes forth and betrothes her, and if thereupon the agent claims, "I betrothed her to myself," while the woman claims, "I have been betrothed to the first man, the one who had sent him," the rule is as follows: If the agent was appointed without witnesses, he is forbidden to all the kinswomen of the woman, but the woman is permitted to his kinsmen; furthermore, the woman is forbidden to the principal's kinsmen, but the principal is permitted to her kinswomen. If the appointment of the agent has been validated by witnesses, the woman is betrothed to the principal.

19. If the woman says, "I do not know to which one I was betrothed, to the principal or to his agent," the rule is as follows: If the appointment of the agent has not been validated by witnesses, she is betrothed to the latter; if the agent's appointment has so been validated, both must give her a get, or if they are agreeable, one may give a get, and the other may then consummate the marriage.

20. If a woman appoints an agent to accept a betrothal in her behalf, and he goes forth and does so, and if while he is gone she cancels the appointment and changes her mind, so that it is not known whether the change of mind took place before he accepted the betrothal in her behalf or after, she is doubtfully betrothed.

The same rule applies to a man who appoints an agent and then changes his mind.

21. If a man betrothes one of five women without knowing which one of them he has betrothed, and each one of them claims, "It is I whom he betrothed," he is forbidden to the kinswomen of all of them, and must give a get to each one of them; he must also deposit the amount of one kĕṯubbah among them,

and then depart. If he has performed the betrothal by way of sexual intercourse, he is subject to the penalty imposed by the Sages, whereby he must pay a kĕṯubbah to each one of them. For it is obvious that the kĕṯubbah which he had written for one of them is lost, and now each one of them can claim, "I am the one whom you betrothed, and for whom you wrote a kĕṯubbah, and my kĕṯubbah is lost."

22. If a woman is rumored to have been betrothed to So-and-so, the presumption is that she is indeed betrothed, even though there is no clear proof of it. No attention, however, need be paid to any rumor that has not been validated in court. What kind of a rumor, then, justifies the presumption that she is betrothed? When, for example, two witnesses come forth and testify that they saw lamps lit, couches spread, people entering and leaving, and women rejoicing in her behalf and saying, "So-and-so has been betrothed today."

If they heard the women saying, "So-and-so is about to be betrothed today," no attention need be paid to it, perchance the assembly was called for the purpose of betrothal but she was nevertheless not betrothed; rather, they must have heard that she was indeed betrothed.

Likewise, if two witnesses come forth and say, "We saw something resembling the rejoicing at a betrothal, and heard the sound of tumult, and So-and-so told us that he had heard from So-and-so that So-and-so was betrothed in the presence of So-and-so and So-and-so," but the direct witnesses thereto had departed to another country or died, this too constitutes a rumor which justifies the presumption that she is betrothed.

23. When does this apply? When there is no reasonable explanation to show how the rumor may have arisen by mistake. If there is a reasonable explanation, however, and the witnesses heard it at the same time that they heard that she was betrothed, she is not presumed to be betrothed.

What constitutes such a reasonable explanation? If it was said at the time, "So-and-so has been betrothed conditionally," or

"with a betrothal of doubtful validity," no presumption is established; rather, she herself must be questioned and reliance must be placed upon her own words, inasmuch as there is no clear proof nor an unequivocal rumor.

24. If rumor has it that a certain woman has been betrothed to So-and-so, and subsequently there appears a reasonable explanation thereof, the rule is as follows: If it appears to the court that the explanation is valid, credence must be given to it, and the presumption is that the woman is not betrothed; otherwise no attention need be paid to the explanation, inasmuch as it was not heard at the same time as the rumor of the betrothal.

25. It happened once that a woman was rumored to have been betrothed to the son of So-and-so. After a while the father was asked about it and declared, "She was betrothed to my son on such-and-such a condition, but the condition was subsequently not fulfilled." The Sages, however, placed no reliance upon his declaration, and ruled that this woman is doubtfully betrothed, as if no reasonable explanation had been advanced.

26. If a woman is rumored to have been betrothed to A, and then B comes along and betrothes her in our presence, A's rumored betrothal must be investigated. If witnesses come forth with clear evidence that she had been betrothed to A, B's betrothal is void. Otherwise A must divorce her, inasmuch as his betrothal is based on rumor, and B may then marry her, inasmuch as his betrothal is certain.

If B divorces her, A may not consummate the marriage, lest it should be said, "He has taken back his divorced spouse after she had been espoused by another man."

27. If a woman is first rumored to have been betrothed to A, and is later similarly rumored to have been betrothed to B, one of the two men, it matters not which, must write a get, and the other may then consummate the marriage.

28. In a place where it is the custom to send gifts to the bride after the espousal, if witnesses come forth to testify that they had

seen gifts being brought to her, there is cause for apprehension that she might have been betrothed, and she therefore requires a get out of doubt, even if the majority of the people of that city send gifts only before the betrothal.

In a place where it is the general custom to send gifts first and betroth thereafter, if the witnesses had seen the gifts, there is no cause for any apprehension of a betrothal.

29. If the presumption is that there was a kĕṯubbah, the rule is as follows: If it is the custom of a minority of the inhabitants of that place to betroth first and then write the kĕṯubbah, there is reason for apprehension that she may have been betrothed. And even if there is no scribe there, it cannot be said, perchance the man had the kĕṯubbah written first because he happened to find a scribe.

If it is the custom of all the people in that place to write the kĕṯubbah before the betrothal, there is no ground for apprehension.

30. If two witnesses say, "We saw her betrothed on such-and such a day," and two others say, "We did not see her," she is considered betrothed, even if all of them reside in the same courtyard, because the claim, "We did not so see her," constitutes no proof, inasmuch as it is the people's custom to perform the betrothal in privacy.

31. If one witness says, "This woman is betrothed," and she herself says, "I was not betrothed," she is permitted to marry anyone else.

If one witness says, "She is betrothed," and another says, "She is not betrothed," she may not marry anyone else. But if she does marry, she need not be compelled to leave her husband, inasmuch as she herself had said, "I was not betrothed."

If she herself says, "I am betrothed," but some time later proceeds to have herself betrothed to someone else, the rule is as follows: If she gives a reason for her claim, by saying, "It was for such-and-such a reason that I had first claimed to be betrothed," and her explanation seems to us to have substance, she

is permitted to the second husband. If she can give no reason, or gives one devoid of substance, she is forbidden to the second husband, and his betrothal has doubtful validity. Therefore the latter must give her a get, and she is thereafter forbidden to him and to anyone else, until such time as her first spouse may appear.

The same applies to a woman who comes forth and says, "I am a married woman," and then turns around and says, "I am not married." If she gives a reason for her statement, and there is substance to her words, she is to be believed.

CHAPTER X

1. An espoused woman is forbidden by Scribal law to her husband as long as she remains in her father's house. If he nevertheless has sexual intercourse with her in his father-in-law's house, he is liable to a flogging for disobedience.

Even if he had betrothed her by way of sexual intercourse, he is forbidden to have intercourse with her a second time while she is still in her father's house, until such time as he may bring her into his own house, seclude himself with her, and thus set her aside as exclusively his own. This seclusion with her is called "induction into the bridal chamber," otherwise generally called nuptials.

He who has intercourse with his spouse after betrothal and for the purpose of marriage, acquires her and makes her wedded to him from the moment he initiates the intercourse with her, and thereafter she is his wife in every respect.

2. Once the spouse has entered the bridal chamber, her husband may have intercourse with her whenever he wishes, seeing that she is completely his wife in every respect.

Once she has entered the bridal chamber, she is called married, even if her husband has not yet had intercourse with her, provided she is fit for intercourse.

If, however, she is menstruating, the nuptials are not yet com-

plete and she still has the status of an espoused woman, even if she has already entered the bridal chamber and has been secluded with her husband.

3. Before the nuptials, the benediction of the bridegroom should be recited in his house. It comprises the following six blessings:

"Blessed art Thou, O Lord, our God, King of the universe, who has created everything for His glory."

"Blessed art Thou, O Lord, our God, King of the universe, Creator of man."

"Blessed art Thou, O Lord, our God, King of the universe, who has created man in His image, in the image of the likeness of His form, and has ordained unto him, out of His own self, a perpetual structure. Blessed art Thou, O Lord, Creator of man."

"May she who was barren be exceedingly glad and exult at the gathering of her children within her in joy. Blessed art Thou, O Lord, who makes Zion joyful through her children."

"O make these loved companions greatly to rejoice, even as of old Thou didst gladden Thy creature in the Garden of Eden. Blessed art Thou, O Lord, who makes bridegroom and bride to rejoice."

"Blessed art Thou, O Lord, our God, King of the universe, who has created joy and gladness, bridegroom and bride, rapture and exultation, pleasure and delight, love, brotherhood, peace, and fellowship. Soon, O Lord, our God, may there be heard in the cities of Judah, and in the streets of Jerusalem, the voice of joy, the voice of gladness, the voice of the bridegroom, and the voice of the bride, the voice of the jubilation of bridegrooms from their bridal chambers and of youths from their feasts of song. Blessed art Thou, O Lord, who makes the bridegroom to rejoice with the bride."

4. If wine is available, a cup of wine should be brought in and a blessing over the wine recited first, and all the rest of the blessings should be so arranged as to be recited over the same cup of wine, making thus seven benedictions in all.

There are places where it is the custom to bring in a myrtle branch with the wine, and to recite a blessing over it after the one over the wine, and then to recite the other six blessings.

5. The bridegroom's benediction may not be recited unless there is a quorum of ten free male adults. The groom may be counted as one of the quorum.

6. If a man espouses a woman and recites the bridegroom's benediction, but does not seclude himself with her in his house, she retains the status of a spouse, because it is not the bridegroom's benediction that effects the marriage but her induction into the bridal chamber.

If he espouses her and inducts her into the bridal chamber, but does not recite the bridegroom's benediction, she is considered as completely married, and he may go back and recite it even after the lapse of several days.

A woman should not be married during her menstrual period, but should wait until after her purification, and only then should the bridegroom's benediction be recited for her. But if the husband transgresses and weds her, and recites the benediction, he need not recite it again.

7. The bridegroom must write a kĕṯubbah before he inducts his bride into the bridal chamber, and only then is he permitted to approach her. It is also he who must pay the scribe's fee.

And what is the amount of her kĕṯubbah? If she is a virgin, not less than two hundred denar; if she is a nonvirgin, not less than a hundred denar. This is what is called "the statutory kĕṯubbah." If he wishes to add to this, even up to a gold talent, he may do so.

The rules concerning the supplementary amount and those concerning the statutory kĕṯubbah are the same in regard to most matters. Therefore, whenever the kĕṯubbah is mentioned without any qualification, it refers to both the statutory amount and the supplementary amount together.

It is the Sages who have instituted the kĕṯubbah for the wife,

in order that the husband should not think lightly of divorcing her.

8. These ordained denars were not pure silver, but rather the coin current in those days, which consisted of seven parts copper and one part silver, so that one sela' contained one-half zuz of silver.

Hence the virgin's two hundred denar are equivalent to twenty-five zuz of pure silver, and the nonvirgin's hundred denar to twelve and a half zuz. The weight of a zuz is ninety-six barleycorns, as we have explained at the beginning of the Laws Concerning 'Eruḇ.

The denar is the coin that is called everywhere zuz, whether it is pure silver or the coin current in those days.

9. The kĕṯubbah of a virgin may not be less than two hundred zuz, nor that of a nonvirgin less than one hundred. If a man designates a lesser amount, his sexual intercourse is sheer harlotry. Whether one writes the kĕṯubbah down in the form of a document, or witnesses testify that he obligated himself to his wife for one hundred or two hundred zuz and confirmed the transaction by a symbolic act of barter, he is permitted to have intercourse with her.

Similarly, if he gives her movables against her kĕṯubbah, he is permitted to have intercourse with her until such time as he may be free to write the document.

10. If a man consummates the marriage with a woman without writing a kĕṯubbah for her, or if he does write it and the document is lost, or if she waives her right to it in his favor, or sells it to him, he must go back and write for her a statutory kĕṯubbah if he wishes to retain her, because a man is forbidden to abide with his wife even for one hour without a kĕṯubbah.

If, however, she sells her kĕṯubbah to others for goodwill benefit, the husband need not write another kĕṯubbah for her, since the kĕṯubbah was instituted only in order that the husband should not think lightly of divorcing his wife. If he subse-

quently divorces her, he must pay her kĕṯubbah to the purchaser, in the same manner as he would have paid it to her had she not sold it.

11. If a man espouses a woman and writes a kĕṯubbah for her, but she is not inducted into the bridal chamber, she is still espoused and not married, because the kĕṯubbah alone does not make the marriage. Therefore, if he dies or divorces her, she may collect her statutory kĕṯubbah from that part of his estate which is not encumbered by lien, but may not collect the supplementary amount at all, inasmuch as he had not inducted her.

If, however, a man espouses a woman but does not write a kĕṯubbah for her, and then dies or divorces her while she is espoused, she has no claim to anything, even to the statutory kĕṯubbah, because the Sages have entitled her to the statutory kĕṯubbah only upon marriage or upon the writing of the document.

If a man has his daughter espoused, and if her husband writes a kĕṯubbah for her, and then dies, or divorces her while she is a maiden, the kĕṯubbah is payable to the father, as we have explained.

12. The Sages have likewise ordained that he who marries a virgin should rejoice with her for seven days. He should neither ply his trade nor buy and sell in the market, but should rather eat, drink, and be merry, whether he had been a bachelor or a widower.

If the woman is a nonvirgin, he should rejoice with her for not less than three days, because it is an enactment of the Sages concerning the daughters of Israel that a man should rejoice with a nonvirgin three days, whether he had been a bachelor or a widower.

13. A man may marry several women simultaneously on the same day, and need recite the bridegroom's benediction only once for all of them. As for rejoicing, however, he must rejoice with each one separately according to her due, that is, with a

virgin seven days, and with a nonvirgin three days, and one rejoicing may not be combined with the other.

14. An espousal may be contracted on any weekday, even on the Ninth of Ab, both during the day and at night. But no wedding should take place on Friday or on Sunday, this being a precaution, lest it should lead to profanation of the Sabbath by the preparation of the wedding feast, the while the groom is occupied with the preparation of that feast.

Needless to say, it is forbidden to marry on the Sabbath. It is forbidden to marry even during the intermediate days of a festival, as we have explained, because one may not combine one rejoicing with another, as it is said, *Fulfill the week of this one, and we will give you the other also* (Gen. 29:27).

As for any other day, it is permitted to marry on any day one may choose, provided one engages in the preparation of the wedding feast for three days before the wedding.

15. In a place where the courts are in session only on Monday and Thursday, a virgin should be married on Wednesday, so that if the husband should challenge her virginity, he might go to court early next morning.

It is the usage of the Sages that one who marries a nonvirgin should do so on Thursday, so that he might rejoice with her on Thursday, on Friday, and on the Sabbath, and then go forth to ply his trade on Sunday.

16. If a man has his daughter espoused while she is a minor, and her husband demands her in marriage, either she or her father may ask for the postponement of the marriage until she grows to be a maiden. If the husband nevertheless insists on immediate marriage, he may marry her forthwith, but it is not proper to do so.

17. If a man espouses a minor girl, waits for several years, and then demands her, who is now a maiden, in marriage, she should be allowed twelve months from the day of the demand to prepare her trousseau and get ready the things that she requires. Then she may be married. If he demands her after she

had come of age, she should be given twelve months from the day when she had come of age.

Similarly, if he betrothes her on the day when she has come of age, she should be given twelve months from the day of her betrothal, which is also the day of her coming of age.

If he betrothes her after she has come of age, and if twelve months had elapsed between her coming of age and her betrothal, she is allowed only thirty days from the day of the demand.

Similarly, if one espouses a nonvirgin, she is allowed thirty days from the day of the demand.

18. Just as the woman is allowed time after being demanded by the man, to provide for her trousseau before being married, so should the man be allowed time after being demanded by the woman, to provide for his equipment.

How much time should he be allowed? The same time as is allowed to the woman. Where she is allowed twelve months, he should be allowed twelve months; where she is allowed thirty days, he should be allowed thirty days.

19. If the time allowed to the man has passed without his marrying the woman, he is liable for her maintenance, even though he had not yet wed her. If the time expires on a Sunday or on a Friday, he is not liable for her maintenance on that day, because on those days he may not wed her.

Similarly, if he or she falls ill, or if at the expiration of the allowed time she is menstruating, he is not liable for her maintenance, because she is unfit for marriage until she is purified or until she recovers. And likewise, he too may not marry the woman until he recovers.

CHAPTER XI

1. If a man marries a virgin who had been widowed or divorced, or had undergone ḥălişah, the rule is as follows: If she had been widowed or divorced, or had undergone ḥălişah, after

espousal, her kĕṯubbah is two hundred zuz; if after marriage, her kĕṯubbah is one hundred zuz, because once she is married she is regarded as a nonvirgin.

Similarly, if one marries an emancipated virgin, a female proselyte, or a captive woman, the rule is as follows: If the bondswoman had been emancipated, or the heathen woman proselytized, or the captive woman ransomed, at the age of less than three years and one day, their kĕṯubbah is two hundred zuz; if over three years and one day, their kĕṯubbah is one hundred zuz.

2. Why did the Sages institute a kĕṯubbah of one hundred zuz for these women, even though they are still in fact virgins? Because the presumption is that a married woman has had sexual intercourse, and so has a bondswoman, a heathen woman, or a captive woman. The Sages have therefore instituted for them a kĕṯubbah of one hundred zuz, whether they have in fact had intercourse or not, and they are accounted as nonvirgins in every respect.

3. The kĕṯubbah of a woman who had lost her virginity by accident is one hundred zuz. Even if she is married on the understanding that she is an intact virgin, and is then found to have lost her virginity by accident, her kĕṯubbah is one hundred zuz.

On the other hand, a minor girl three years old or less who has had intercourse, even if with an adult male, is entitled to a kĕṯubbah of two hundred zuz, because she will eventually recover her virginity and become like other virgins.

Likewise, an adult woman who has had intercourse with a minor male nine years old or less, is entitled to a kĕṯubbah of two hundred zuz, as if she had had no intercourse at all, because the rule is that union with a male nine years and one day old and over is regarded as effective intercourse, while union with a male of lesser age is not.

4. A virgin who has come of age, or is blind, or barren, is entitled to a kĕṯubbah of two hundred zuz. For a deaf-mute or

an imbecile, however, no kĕṯubbah has been instituted. In the case of an imbecile, the Sages have instituted no marriage at all for her. As for a deaf-mute, even though marriage with her is valid according to Scribal law, no kĕṯubbah has been instituted for her, in order that people should not be loath to marry her. And just as she has no kĕṯubbah, so is she not entitled to any maintenance, nor to any of the conditions set forth in the kĕṯubbah.

If a man marries a deaf-mute, and she subsequently becomes sound, she is entitled to a kĕṯubbah and to the conditions contained therein, but the amount of her kĕṯubbah is only one hundred zuz.

5. If a man marries a deaf-mute or an imbecile and writes in their kĕṯubbah the sum of one hundred minas, their kĕṯubbah is valid, because he had voluntarily agreed to have his property suffer a loss.

6. If a male deaf-mute or imbecile marries a normal woman, their wives have no claim upon them, even if the deaf-mute recovers or the imbecile becomes of sound mind. If the husbands after their recovery wish to retain their wives, the wives are entitled to a kĕṯubbah of one hundred zuz.

If it is the court who had given the deaf-mute in marriage and had written the wife's kĕṯubbah, charging it against his possessions, she is entitled to take whatever amount the court had written for her. The court may not, however, give a male imbecile in marriage anywhere, for inasmuch as the enactment of the Sages cannot endure with him, they did not institute marriage for him.

Similarly, the Sages did not institute marriage for a male minor, because eventually he will be able to contract full marriage for himself. Why, then, have they instituted marriage for a female minor, even though she, too, will eventually be able to contract full marriage for herself? To prevent her from being used wantonly.

A male minor should not be given in marriage until he is examined and is found to exhibit the tokens of puberty.

7. If a male minor, even one nine years and one day old, marries a woman, she has no kĕṯubbah. If he grows to adulthood and retains her thereafter, she is entitled to the statutory kĕṯubbah.

Similarly, if a proselyte has become converted together with his wife, the latter is entitled to a kĕṯubbah of one mina, because it is on this understanding that he has retained her as his wife.

8. Every virgin whose kĕṯubbah is two hundred zuz is open to the charge of nonvirginity; every woman whose kĕṯubbah is one hundred zuz, or one for whom the Sages have not instituted any kĕṯubbah, is not open to that charge.

If a man secludes himself with his spouse before the nuptials, he cannot prefer charges of nonvirginity against her.

9. What constitutes the charge of nonvirginity? When a man marries a woman presumed to be a virgin, and thereupon prefers charges against her, saying, "I did not find her to be a virgin."

There are two tokens of virginity: the first is the blood that flows from her at the conclusion of the first intercourse, and the second is the tightness that is found in her at the first intercourse during coition.

10. If a man marries a virgin whose kĕṯubbah is two hundred zuz, and then prefers charges, saying, "I did not find her a virgin," she should be questioned about it. If she says, "It is true, he did not find me a virgin, because I had fallen and struck against a piece of wood, or against the ground, and thereby lost my virginity," she is to be believed, but her kĕṯubbah reverts to one hundred zuz.

Even if he objects, saying, "Perchance a man has had intercourse with you, and you are therefore not entitled to anything," no attention need be paid to his objection, and since his claim is not based upon a certainty, he can only adjure her under a general ban that no man has had intercourse with her.

11. If she says, "It is true that he did not find me a virgin, for a man did rape me after I had been espoused to him," she is

to be believed, and her kĕṯubbah remains at two hundred zuz as before.

If, however, he objects, saying, "Perchance you were raped before I had espoused you, and my bargain was a mistaken one," or, "Perchance you willingly had intercourse with another man after I had espoused you," he can do no more than pronounce a general ban against "anyone who makes a false claim, in order to render me liable for money that I do not owe."

12. If he charges her, saying, "I did not find her a virgin," while she says, "He did not yet have any intercourse with me, and I am still a virgin," she must be examined, or he must be made to have intercourse with her once more before witnesses.

If she says, "He did have intercourse with me, and did find me a virgin like all virgins, and his charge is false," he should be asked, "What did happen that made you say she was not a virgin?" If he replies, "Because I did not find her bleeding," inquiry should be made of her family, perchance they do not bleed at all, neither menstrual blood nor the blood of virginity. If they are all found not to bleed, she remains under the presumption of having been a virgin. If the female members of her family are found to bleed normally, she must be examined, perchance she suffers from a grave illness which has dried up the juices of her bodily members, or perchance she has been starving herself. If that is so, she should be bathed and plied with food and drink until she is restored to health, and then made to have intercourse once more, so that it might be seen whether she bleeds or not.

If there is neither illness there, nor starvation, nor anything like it, the charge of nonvirginity stands valid. Even if the husband experiences tightness during intercourse, there is no virginity so long as there is no bleeding. For all virgins, whether minor or adult, whether a maiden or one who has come of age, do bleed unless they suffer from illness, as we have just explained.

If he says, "Because I did not feel any tightness, but on the

contrary found an open door," she should be questioned as to her age, perchance she has already come of age, because most women who are of age do not exhibit any appreciable tightness, for having grown up, her bodily members may have become loose and the tokens of virginity may have disappeared. If she has not yet come of age, he should be told, "Perchance you had turned aside or gone in gently, and therefore did not feel any tightness." If he replies, "Nay, on the contrary, it was definitely an open door," this constitutes a valid charge of nonvirginity against any virgin who has not yet come of age, whether a minor or a maiden, whether well or ill. For in the case of every virgin her door is shut, and therefore, even if there was bleeding, once he found the door open, there is no virginity.

13. There are some Geonim who taught that in the case of a girl who has come of age, the charge of nonvirginity is invalid if based upon failure to bleed, but valid if based upon an "open door." The text of the Talmud, however, does not indicate this conclusion, and these authorities had an error in their copies of it. I have long since examined many ancient copies of the Talmud and found the matter to be as we have stated it, namely, that in the case of a girl who has come of age the charge of nonvirginity is valid only when based upon failure to bleed.

14. It is the Sages who have instituted the statutory kĕṭubbah for the woman, and it is they who have instituted the rule that whenever the bridegroom charges the bride with lack of virginity, and she denies it, he is to be believed, and the burden of proof is upon her, and not upon him. For the presumption is that no man will go to the trouble of preparing a wedding feast and then waste it, thus transforming his rejoicing into mourning.

15. For how long does he retain the right to prefer charges of nonvirginity? If she has secluded herself with him, he must bring these charges immediately; if she has not, he may bring these charges even after thirty days.

16. All the Geonim have taught that the Sages' ruling to the effect that the husband is to be believed even if the wife denies his accusation, applies only insofar as she forfeits the statutory kĕṯubbah. She retains, however, her title to the supplementary amount, unless indeed it becomes known by clear proof that she had had intercourse previously, or has admitted to him that she had had it before she was espoused, and had thus deceived him. Consequently he may make her swear an oath while holding a sacred object, as is the rule in the case of all those who swear an oath and then are paid what they claim. Thereupon she may claim the supplementary amount.

She may not, however, make him swear an oath that he did not find her a virgin, before she forfeits the statutory kĕṯubbah, because the presumption is that no man will go to the trouble of preparing a wedding feast and then waste it. On the other hand, she may pronounce a general ban against anyone who has brought false charges against her.

17. If he wishes to retain her after she had forfeited the statutory kĕṯubbah, he must write for her another kĕṯubbah for one hundred zuz, because a man is forbidden to abide with his wife even for one hour without a kĕṯubbah, as we have explained.

CHAPTER XII

1. When a man marries a woman, whether virgin or non-virgin, whether adult or minor, whether a daughter of Israel, a proselyte, or an emancipated bondswoman, he obligates himself to her for ten things, and is in turn entitled to four things from her.

2. Of the ten, three are found in the Torah: *her food, her raiment, and her conjugal rights* (Exod. 21:10). *Her food* signifies her maintenance; *her raiment,* what the term implies; *her conjugal rights,* sexual intercourse with her, according to the way of the world.

The other seven are of Scribal origin, and all of them are conditions laid down by the court. The first of them is the statutory kĕṯubbah; the rest are called "conditions contained in the kĕṯubbah." They are the following: to treat her if she falls ill; to ransom her if she is captured; to bury her if she dies; to provide for her maintenance out of his estate; to let her dwell in his house after his death for the duration of her widowhood; to let her daughters sired by him receive their maintenance out of his estate after his death, until they become espoused; to let her male children sired by him inherit her kĕṯubbah, in addition to their share with their half-brothers in his estate.

3. And the four things he is entitled to are all of Scribal origin, namely the following: he is entitled to her earnings, to anything she finds, and to the usufruct of her estate during her lifetime. And should she die in his lifetime, he is her heir, with precedence over anyone else as to her estate.

4. The Sages have further enacted that a wife's earnings are chargeable against her maintenance, her ransom against the usufruct of her estate, and her burial expenses against the husband's inheritance of her kĕṯubbah.

Therefore, if the wife says, "I want neither maintenance nor work," her wish must be respected and she may not be coerced. On the other hand, if the husband says, "I will neither support you nor take any of your earnings," no attention need be paid to him, perchance her earnings will not suffice for her support. It is because of this enactment that the obligation of maintenance is regarded as one of the conditions contained in the kĕṯubbah.

5. All the aforementioned terms obtain even if they are not so written in the kĕṯubbah, or even if no kĕṯubbah at all is written, and the marriage is contracted without it. Once the marriage takes place, the husband is entitled to his four rights, and the wife to her ten, and there is no need to specify them.

6. If the husband stipulates that he is to be exempt from one of his obligations, or if the wife stipulates that he is to forfeit

one of his privileges, the stipulation stands valid, except in three things which are not subject to stipulation, so that any stipulation made concerning them is null and void. They are the following: her conjugal rights, her statutory kĕṯubbah, and his right to her estate.

7. How so? If the husband stipulates that the wife is to have no conjugal rights due from him, the condition is null and void, and he remains obligated for her conjugal rights, inasmuch as he has stipulated a condition contrary to the Torah, and the condition does not involve money.

8. If he stipulates less than the statutory amount of the kĕṯubbah, or states the statutory two hundred or one hundred zuz, but obtains from her a writ to the effect that of this amount she has already received so-and-so much, although she has not in fact received it, his condition is null and void. For whosoever obligates himself to less than two hundred zuz for a virgin, or one hundred for a widow, his intercourse with her is sheer harlotry.

9. If after marriage he stipulates that he is not to be her heir, his condition is null and void, because even though the husband's right to his wife's estate is of Scribal origin, the Scribes nevertheless gave their enactment the same force as that of the Torah. Thus every stipulation concerning inheritance is null and void, even though inheritance is a money matter, because of inheritance it is said, *a statute of judgment* (Num. 27:11).

In other matters, however, his stipulation is valid. For example, if he stipulates that she is not to be entitled to food and raiment, on the understanding that he is not to be entitled to the usufruct of her estate, or makes any similar condition, his stipulation is valid.

10. How much maintenance is a wife to be given a right to? She is entitled to bread for two meals daily, each being the average meal of all the people in that city, as consumed by a person who is neither ill nor gluttonous. The bread is to be made of

grain used by the people of that city; if they use wheat, then of wheat; if barley, then of barley; and the same applies to rice, millet, or any other kind of cereal customary with the people.

She is also entitled to a side dish to eat with the bread, such as pulse, green vegetables, or the like. Also edible oil, lamp oil, fruit, and some wine to drink, if it is the custom in that place for women to drink wine.

On the Sabbath, she is entitled to three meals, with meat or fish, according to the custom of that place. The husband must also give her a silver mĕ'ah every week for her other needs, such as a pĕruṭah for laundry or bathhouse, and the like.

11. To whom does this apply? To a poor man in Israel; but if the husband is wealthy, all should be according to his wealth. Even if his wealth is sufficient to provide her with several meat dishes every day, he must be compelled to provide her with maintenance according to his wealth.

If he is so exceedingly poor that he is unable to give her even the bread she needs, he should be compelled to divorce her, and her kĕṯubbah should remain as a debt upon him until such time as he is able to pay it.

12. If the husband is willing to give his wife the maintenance due her, but with the proviso that she is to eat and drink by herself, and he by himself, he may do so, provided he eats with her on every Sabbath eve.

13. In the case of a woman who has been given an allowance for her maintenance, if there is a surplus, the surplus goes to the husband. If the husband is a priest, he should not give her all of her food out of heave offering, because it is too much trouble for her to guard it from anything that might defile it, and to eat it in a state of purity. He should rather give her one half of it out of profane food and the other half out of heave offering.

14. Just as a man is liable for the maintenance of his wife, so is he liable for the maintenance of his minor sons and

daughters, until they reach the age of six years. After that he must provide them with food until they grow up, according to the enactment of the Sages.

If he refuses, he should be reprimanded, shamed, and importuned. If he still refuses, a public announcement concerning him should be made, as follows: "So-and-so is a cruel man and refuses to maintain his children"; he is worse therefore than an unclean bird, for it does feed its young. He may not be compelled, however, to maintain his children after the age of six.

15. When does this apply? When the man is not reputed to be wealthy, and it is not known whether or not he is able to give alms. If he is reputed to possess enough wealth to be able to afford alms sufficient to cover his children's needs, the corresponding amount should be forcibly collected from him, under the heading of alms, and the children should be maintained out of it until they grow up.

16. If a man had gone to another country, and his wife comes before the court claiming maintenance, the rule is as follows: For the first three months after his departure she is allowed no maintenance, the presumption being that a person does not leave his house empty. After that she is given an allowance for her maintenance. If he has property, the court may seize it and sell some of it to provide for her maintenance. No accounting need be made with her of her own earnings until her husband returns. If he then finds that she had an earned income, that income reverts to him.

Similarly, if she has not made her claim in court, but herself sold some property to provide for her maintenance, her sale is valid, and she need not make a public announcement nor swear an oath until her husband returns and challenges her, or until she comes forth to claim her kĕṭubbah after his death. At that time we devolve upon her an additional oath that she had sold only as much as was necessary to provide for such maintenance as she required.

17. Just as the court may sell property for the maintenance of a wife whose husband had gone away, so may they also sell it for the maintenance of his sons and daughters if they are six years old or less.

If, however, they are over six years old, they may not be provided for out of the sale of his property in his absence, even if he is reputed to be well-to-do.

Similarly, if a man becomes an imbecile, the court may seize his property and sell it, in order to provide for the maintenance of his wife and of his sons and daughters who are six years old or less, and to supply their needs.

18. There are some Geonim who taught that no allowance may be granted for the maintenance of a wife whose husband has gone to a country beyond the sea or has died, unless she produces a kĕṯubbah. If she does not produce a kĕṯubbah, she is not entitled to maintenance, perchance she has already collected her kĕṯubbah from her husband, or had waived her right to it, so that she is no longer entitled to maintenance, as shall be explained.

Others taught that the wife is entitled to maintenance outright, on the presumption that she had neither collected her kĕṯubbah nor waived her right to it, and therefore need not be required to produce a kĕṯubbah. My own opinion inclines towards the latter view in the case of the wife whose husband had gone away, because her right to maintenance is based on the Torah. In the case of her husband's death, however, she is not entitled to maintenance until she produces a kĕṯubbah, because in this case her right to maintenance is based on an enactment of the Sages. Moreover, her maintenance comes out of the property of the heirs, and one must always plead in behalf of an heir.

19. If a woman whose husband had gone away borrows money for her maintenance, the husband, upon his return, is obligated to repay it. If another man, on his own initiative, provides for her maintenance at his own expense, the husband, upon his return, is not obligated to repay him, so that he loses his money,

inasmuch as the husband did not commission him to maintain her, nor did she borrow from him.

20. If the husband says to his wife at the time of his departure, "Use your earnings for your maintenance," she is not entitled to maintenance, because had she not agreed to this arrangement and acquiesced in it, she could have demanded maintenance from him, or said to him, "My earnings are not adequate for me."

21. If having come before the court, she is granted maintenance, and the court sells some of the husband's property and gives her the proceeds, or she herself sells it for her own use, and if then the husband returns and says, "I left provisions with her for her maintenance," she must swear an oath while holding a sacred object to the effect that he did not do so.

If she made no claim nor sold anything, but waited until his return, and if at that time he says, "I left provisions," while she says, "You left none, but I borrowed from this individual to maintain myself," he must swear an informal oath to the effect that he did leave provisions for her, and is then exempt, while she alone remains liable for the debt.

22. If having sold movables, she says, "I sold them for my maintenance," while he argues, saying, "I left provisions for your maintenance," she must swear an informal oath to the effect that he did not leave provisions.

If she neither made any claim, nor borrowed, nor sold, but rather exerted herself greatly day and night by laboring in order to earn her maintenance, she is not entitled to anything.

23. If a man subjects his wife to a vow that she will not derive any benefit from him, whether he specifies that the vow is to be effective up to a certain time, or places no time limit at all upon it, he is given thirty days. If the duration of the vow is then completed, or if he is released from his vow before its expiration, that is best. If not, he must divorce her and pay her her kĕṯubbah. During those thirty days she should work to

support herself, and one of his friends should provide her with those necessities which she must have over and above her earnings, if her earnings do not suffice for all her needs.

24. If a man subjects his wife to a vow that she is not to taste of a certain kind of produce, he is given thirty days. Beyond that, he must divorce her and pay her her kĕṯubbah. Even if he makes her vow not to eat a harmful kind of food, or not to eat a kind of food that she had never eaten before, he must divorce her after thirty days and pay her her kĕṯubbah.

If she herself vows that she will not eat of a certain kind of produce, and he validates her vow, or if she vows to be a Nazirite, and he does not annul her vow, the rule is as follows: If he is willing that she should abide with him while eating none of that kind of produce, or while being a Nazirite, she may do so. If, however, he says, "I do not want a wife who is prone to making vows," he must divorce her and pay her her kĕṯubbah, inasmuch as he had it in his power to annul the vow, and yet he voluntarily validated it.

CHAPTER XIII

1. How much raiment is the husband obligated to provide for his wife? Clothes to the amount of fifty zuz per annum, in the coin current at that time, when fifty zuz equaled six and a quarter silver denar.

The new garments should be given to her in the rainy season, so that they would be well worn when she wears them in the dry season; as for worn-out garments, meaning what remains of the original clothes, they are hers to cover herself therewith during her menstrual period. She is also to be given a girdle for her loins, a cap for her head, and shoes from one festival to the other.

2. When does this apply? In those days and in the Land of Israel. At other times, however, and in other places, the specified

value is not the determinant. There are places where clothing may be very expensive or very cheap. The principle to be observed is that the husband is obligated to give her garments suitable for the rainy season and for the dry season, worth not less than what any housewife in that country would require for her wearing apparel.

3. Included with the garments that he is obligated to give her are the house furnishings and the dwelling itself in which she resides.

What are the house furnishings? A spread couch, and a mattress or mat to sit on; and eating and drinking utensils such as a pot, a platter, a cup, a bottle, and the like. As for the dwelling, he must lease for her a house at least four cubits by four, with a yard outside for her use. It should also have a separate lavatory.

4. He is likewise obligated to give her toilet articles, such as colored fabrics to wind around her head and forehead, eye-paint, rouge, and the like, so that she might not seem unattractive to him.

5. To whom does this apply? To the poor in Israel. As for the wealthy, everything should be commensurate with his wealth. Even if he can afford to buy her silken and embroidered garments and gold jewelry, he should be compelled to do so.

The same applies to the dwelling, which should likewise be commensurate with his wealth; and so should the toilet articles and the house furnishings—everything should be according to his wealth.

If, however, he cannot afford to provide her with even as much as do the poor in Israel, he should be compelled to divorce her, and the kĕṯubbah should remain a debt upon him until such a time as he may grow wealthy.

6. This obligation applies not only to the wife; the husband must also supply his little sons and daughters, six years old or less, with garments adequate for them, utensils, and a dwelling

to live in. He need not, however, provide for them according to his wealth, but only according to their needs.

The principle is this: Whomsoever he is obligated to provide with maintenance, both during his lifetime and after his death, him he must provide also with clothing, house furnishings, and shelter; and just as the court may sell a man's property in order to provide for his dependent's maintenance, so may the court sell his property in order to provide for the dependent's garments, house furnishings, and shelter.

7. In the case of a woman whose husband had gone away and who had been granted an allowance by the court for her maintenance, clothing, house furnishings, and dwelling rental, no allowance may be granted her for toilet articles, since her husband, for whose sake she should adorn herself, is not present.

If, however, her husband has become an imbecile or a deaf-mute, she is entitled to an allowance for toiletries.

The rule governing the husband's relationship to his wife in claims for garments, furnishings, and dwelling rentals, is the same as in claims for maintenance. If he says, "I have already given," while she says, "You have not," the same rule applies to both kinds of claims.

8. If a man subjects his wife to a vow not to adorn herself with a certain kind of cosmetics, the rule is as follows: In the case of a poor woman, he may keep her for one year under that vow; beyond that, he must either effect a release from his vow or divorce her and pay her her kĕṯubbah. In the case of a wealthy woman, he may keep her under that vow for thirty days; beyond that, he must either effect a release from his vow or divorce her and pay her her kĕṯubbah.

9. If a man subjects his wife to a vow not to frequent the bathhouse, he may retain her under that vow for one week in a city, or for two weeks in a village.

If he subjects her to a vow not to wear shoes, the rule is that he may retain her under that vow for three days in a village, or for

twenty-four hours in a city. Beyond that, he must either effect a release from his vow or divorce her and pay her her kĕṯubbah.

10. If he subjects her to a vow neither to borrow nor to lend any house furnishings that are customarily borrowed or lent by neighboring housewives—for example, a sifter, a sieve, a handmill, an oven, or the like—he must either effect a release from his vow or divorce her and pay her her kĕṯubbah, because he thereby gives her a bad name among her neighbors.

Similarly, if she vows neither to borrow nor to lend a sifter, a sieve, a handmill, an oven, or the like, or not to weave handsome garments for the children, in a place where it is the custom for women to do so, she must be divorced with the forfeiture of her kĕṯubbah, because she thereby gives him a bad name in his neighborhood, to the effect that he is a miser.

11. In a place where it is the custom for a woman not to go out into the street wearing upon her head only a cap, but to wear also a veil that covers her whole body like a cloak, he must include in the garments given to her a veil of the least expensive variety. If he is wealthy, he must give her a veil of better quality according to his wealth, in order that she might wear it to her father's house, to a house of mourning, or to a wedding feast. For every woman is entitled to go to her father's house to visit him, or to a house of mourning or a wedding feast as an act of kindness to her friends and relatives, in order that they in turn might visit her on similar occasions, for she is not in a prison where she cannot come and go.

On the other hand, it is unseemly for a woman to be constantly going out abroad and into the streets, and the husband should prevent his wife from doing this and should not let her go out, except once or twice a month, as the need may arise. Rather, the seemly thing for a woman is to sit in the corner of her house, for so is it written, *All glorious is the king's daughter within the palace* (Ps. 45:14).

12. If a man subjects his wife to a vow not to go to her father's house, the rule is as follows: If her father resides in the same

city, the husband is given one month; if he persists in his vow for two months, he must divorce her and pay her her kĕṯubbah. If her father resides in another city, the husband is given time until the expiration of the next pilgrimage festival. If two such festivals have passed by, he must divorce her and pay her her kĕṯubbah.

13. If a man subjects his wife to a vow not to visit a house of mourning or a wedding feast, he must either effect a release from his vow or divorce her and pay her her kĕṯubbah, because this is tantamount to confining her in a prison and locking the door before her. If, however, he claims that he does so because there are dissolute persons in that house of mourning or at that wedding feast, and the presumption is that there are indeed dissolute persons there, his wish is to be honored.

14. If a man says to his wife, "I do not wish to have your father, your mother, your brothers, or your sisters come to my house," his wish is to be honored, and she should visit them instead when anything happens to them. She should also visit her father's house once a month, and on each pilgrimage festival. They, however, should not visit her, unless something has happened to her, such as illness or a delivery, for no man may be compelled to let others enter his premises.

Thus, also, if she says, "I do not wish to have your mother or your sisters visit me, nor do I wish to reside in the same courtyard with them, because they cause me harm and annoyance," her wish is to be honored, for no man may be compelled to let other people reside with him on his premises.

15. If a man says, "I do not choose to reside in this dwelling, because wicked persons, or dissolute persons, or heathens are in my neighborhood, and I am afraid of them," his wish is to be honored, even if there is no presumption that these people are indeed dissolute, because thus have our Sages commanded, "Keep away from an evil neighbor." Even if the dwelling belongs to her, she may be removed therefrom, so that he might dwell among decent people.

Similarly, if it is she who says this, her wish is to be honored, even if he says, "I am not particular about them," because she may say further, "I do not wish to get a bad name by residing with such neighbors."

16. The inhabited world is divided into several lands, such as the land of Canaan, the land of Egypt, the land of Yemen, the land of Ethiopia, the land of Babylonia, and the like. Each land is comprised of cities and villages. The cities of the Land of Israel are, as far as marriage is concerned, regarded as situated in one of its three provinces, Judah, Transjordan, and Galilee.

17. If a man from one land marries a woman in another land, she may be compelled to go with him to his own land; otherwise she may be divorced with forfeiture of her kĕṯubbah, because even though he did not say so explicitly, he married her on this understanding.

If, however, a man marries a woman in one land, and is himself a resident of that same land, he may not remove her to another land, but may only take her from one city to another, or from one village to another, in that same land. Moreover, he may not remove her from a city to a village, or from a village to a city, because there are some matters for which living in a city is an advantage, and there are other matters for which living in a village is an advantage.

18. In moving her from one city to another, or from one village to another, in that same land, he may not move her from a fine location to a mean one, or vice versa, because in a fine location she has to go to the trouble of taking pains about her person, in order that she should not be thought of as ordinary and unattractive.

Similarly, he should not move her from a place where the majority of the inhabitants are Israelites to a place where the majority are heathens.

In all cases, however, he may move her from a place where the majority of the inhabitants are heathens to a place where the majority are Israelites.

19. When does this apply? When the moving takes place from one foreign land to another, or from one place in the Land of Israel to another. If, however, the moving is from a foreign land to the Land of Israel, the wife may be compelled to move, even from a fine location to a mean one, indeed even from a place where the majority of the inhabitants are Israelites to a place where the majority is heathen.

She may not, however, be compelled to move from the Land of Israel to a foreign land, even if it is from a mean location to a fine one, indeed even from a place where the majority of the inhabitants are heathens to a place where the majority is Israelite.

20. If the husband declares his intention to move to the Land of Israel, and the wife does not wish to do so, she may be divorced with forfeiture of her kĕṯubbah. If it is she who wishes to move to the Land of Israel while he refuses to do so, he must divorce her and pay her her kĕṯubbah.

This same rule applies to every place in the Land of Israel in relation to Jerusalem: just as any spouse may compel his or her mate to move to the Land of Israel, but not to move from the Land of Israel, so may any spouse compel his or her mate to move to Jerusalem from any part of the Land of Israel, but not to move from Jerusalem.

CHAPTER XIV

1. The conjugal rights mentioned in the Torah are obligatory upon each man according to his physical powers and his occupation.

How so? For men who are healthy and live in comfortable and pleasurable circumstances, without having to perform work that would weaken their strength, and do nought but eat and drink and sit idly in their houses, the conjugal schedule is every night. For laborers, such as tailors, weavers, masons, and the like, their conjugal schedule is twice a week if their work is in

the same city, and once a week if their work is in another city.

For ass-drivers, the schedule is once a week; for camel-drivers, once in thirty days; for sailors, once in six months; for disciples of the wise, once a week, because the study of Torah weakens their strength. It is the practice of the disciples of the wise to have conjugal relations each Friday night.

2. A wife may restrict her husband in his business journeys to nearby places only, so that he would not otherwise deprive her of her conjugal rights. Hence he may not set out except with her permission.

Similarly, she may prevent him from exchanging an occupation involving a frequent conjugal schedule, for one involving an infrequent schedule, as for example, if an ass-driver seeks to become a camel-driver, or if a camel-driver seeks to become a sailor.

Disciples of the wise, however, may absent themselves for the purpose of studying Torah without their wives' permission for as long as two or three years. Similarly, if a man leading a comfortable and pleasurable life decides to become a disciple of the wise, his wife may not hinder him.

3. A man may marry several women, even a hundred of them, either at the same time or one after another, and his wife may not hinder him therein, provided that he is able to supply each one of them with the food, raiment, and conjugal rights due her. He may not, however, compel them to reside in the same courtyard, but must let each one reside by herself.

4. What then are their conjugal rights? It depends on their number. How so? In the case of a laborer who has two wives, each one's schedule is once a week. If he has four wives, each one's schedule comes to once every two weeks. Similarly, if a sailor has four wives, each one's schedule is once in two years. The Sages have therefore ordained that a man should not marry more than four wives, even if he has a great deal of money, in order that each wife's schedule should be at least once a month.

5. If a man subjects his wife to a vow to tell other people what he says to her or what she says to him, in the way of jocular and frivolous things that a man converses about with his wife in connection with sexual intercourse, he must divorce her and pay her her kĕṯubbah, because it is unbearable for her to be so brazenfaced as to tell such embarrassing things to others.

Similarly, if he subjects her to a vow to make violent motions during intercourse in order to prevent conception, or to act in the manner of fools, or do things that have no substance but are sheer foolishness, he must divorce her and pay her her kĕṯubbah.

6. If a man subjects his wife to a vow that he will have no intercourse with her, he is given a week's grace; beyond that, he must divorce her and pay her her kĕṯubbah, or else effect a release from his vow.

This applies even to a sailor, whose schedule is once in six months, because once he makes the vow he has caused her suffering and despair.

How does one subject his wife to such a vow? If he says to her, "My intercourse is to be forbidden to you," or swears that he will have no intercourse, he has vowed nothing, or if he swears an oath, he has sworn in vain, because he is obligated to her. If, however, he says to her, "The benefit of your intercourse is to be forbidden to me," it is a valid vow, and he may not have intercourse, for no man may be fed anything that is forbidden to him.

7. A man may not withhold from his wife her conjugal rights. If he transgresses and does so withhold in order to torment her, he has violated a negative commandment of the Torah, for it is said, *her food, her raiment, and her conjugal rights shall he not diminish* (Exod. 21:10). If he has become ill or enfeebled, so that he is unable to have sexual intercourse, he may wait six months, which is the least frequent schedule—perchance he will recover. After that, he must either obtain her consent or divorce her and pay her her kĕṯubbah.

8. The wife who prevents her husband from having intercourse with her is called "a rebellious wife," and should be

questioned as to the reason for her rebelliousness. If she says, "I have come to loathe him, and I cannot willingly submit to his intercourse," he must be compelled to divorce her immediately, for she is not like a captive woman who must submit to a man that is hateful to her. She must, however, leave with forfeiture of all of her kĕṯubbah, but may take her worn-out clothes that are still on hand, regardless of whether they are part of the property brought by her to her husband, for which he had become surety, or are mĕlōg property, for which he had not become surety. She may take nothing that belongs to her husband. Even the shoes on her feet, and the kerchief upon her head, which he had bought for her, she must remove and return to him. Everything he had given her as a gift she must likewise return to him, because he had not given all these to her on the understanding that she would take them and leave him.

9. If she rebels against her husband merely in order to torment him, and says, "I am going to make him suffer in this way, because he has done thus-and-so to me," or "because he has cursed me," or "because he quarrels with me," or anything similar, the court should send her a message stating as follows: "Be it known unto you that if you persist in your rebellion, your kĕṯubbah, even if it is for one hundred minas, will stand forfeited." After that an announcement should be made about her in the synagogues and the houses of study, every day for four consecutive weeks, to the effect that "So-and-so has rebelled against her husband."

10. After the announcement the court should send her a second message, saying, "If you persist in your rebellion, you will forfeit your kĕṯubbah." If she persists in her rebellion and does not repent, a consultation should be held with her. Whereupon she is to forfeit her kĕṯubbah and lose her title to any kĕṯubbah at all. Nor should she be given a gеṯ until twelve months have passed, during which she is to receive no maintenance. And if she dies before receiving the gеṯ, her husband inherits her estate.

11. This procedure is to be followed if she rebels merely in order to torment him. It is to be followed even if she is men-

struating or is ill, and is thus unfit for sexual intercourse, or even if her husband is a sailor whose schedule is once in six months, and even if he has also another wife.

12. The same applies to an espoused woman whose time has come for wedlock, and who rebels against her husband-to-be in order to torment him, and refuses to be wed—she is to be regarded as a woman who has rebelled against having sexual intercourse with her husband. And the same procedure is followed also in the case of a yĕḇamah who refuses to marry her levir merely in order to torment him.

13. The latter kind of rebellious wife, when divorced after twelve months with forfeiture of her kĕṯubbah, must return everything belonging to her husband. As for the property brought by her to him, and the worn-out remains thereof that are still in existence, if she has taken possession of them, they are not to be seized from her; but if her husband has them in his possession, she may not repossess them from him. Similarly, the husband is not obligated to restore anything that has been lost of her property for which he had become surety. This is the rule of the Talmud concerning a rebellious wife.

14. The Geonim have said that in Babylonia they had different customs regarding a rebellious wife, but these customs have not spread among the majority of Israel, and many great scholars in most places disagree with them. It is proper, therefore, to follow the rule of the Talmud and decide accordingly.

15. If a man rebels against his wife, and says, "I will feed and maintain her, but I will have no sexual intercourse with her, because I dislike her," the weight of thirty-six barley-corns of silver should be added to her kĕṯubbah each week, and he may continue to abide with her without having any intercourse with her, so long as she is willing to abide with him. Yet even though the kĕṯubbah keeps increasing, he is nevertheless guilty of transgressing a negative commandment, because it is said, *He shall not diminish* (Exod. 21:10), implying that if he comes to dislike her, he should send her away, but is forbidden to torment her.

Why then is he not to be flogged for transgressing this negative commandment? Because it does not involve any action.

16. If husband and wife appear before the court, he saying, "She has rebelled against having intercourse with me," and she saying, "Nay, I am with him according to the way of all the world," or vice versa, a ban should first be pronounced against the one who rebels and refuses to admit it in court. After that, if neither of them admits it, they should be told, "Seclude yourselves in the presence of witnesses." If having so secluded themselves, they still persist in their claims, the accused party should be entreated, according to the best ability of the judge, to accept a compromise. To force them, however, to have intercourse in the actual presence of other people, is impossible, because it is forbidden to have intercourse in the presence of any creature.

17. If the wife becomes ill, the husband is obligated to treat her until she recovers. If seeing that the illness is a long one, and that he will have to spend a great deal of money for her treatment, he says to her, "Here is your kĕṯubbah. Either defray your treatment out of your kĕṯubbah or I will divorce you," gives her her kĕṯubbah, and departs, his wish must be honored. It is not proper to do this, however, because it is contrary to decency.

18. If she is made captive, he is obligated to ransom her. If he is a priest, to whom her captivity has already made her forbidden, he must nevertheless ransom her and return her to her father's house. Even if he resides in another city, he must take care of her until he returns her to her own city, divorce her, and pay her her entire kĕṯubbah. If her husband is an Israelite, to whom her captivity has not made her forbidden, he must take her back as his wife, just as she was heretofore. And if thereafter he wishes to divorce her, he may do so, with payment of her kĕṯubbah.

19. The husband is not obligated to ransom his wife for more than her price, but only for her normal worth, the same as that of any other captive woman. If her price is more than the

amount of her kĕṯubbah, and he says, "I hereby divorce her; here is her kĕṯubbah—let her go and ransom herself," no attention need be paid to him, rather he must be forced to ransom her, even if her price is ten times the amount of her kĕṯubbah, and even if his entire property is just sufficient to provide her ransom.

When does this apply? The first time only. If he has already ransomed her once, and she is captured a second time, he may, if he wishes, divorce her with payment of her kĕṯubbah, and she must then ransom herself.

20. If the wife is made captive while her husband is away in a country beyond the sea, the court may seize his property, sell it at public auction, and ransom her, just as the husband would have done it.

21. If a man subjects his wife to a vow which obligates him to divorce her and pay her her kĕṯubbah, and she is made captive after being subjected to that vow, he is not obligated to ransom her, because from the moment he made the vow he became obligated to divorce her and pay her her kĕṯubbah.

22. If a woman who is forbidden to her husband by one of the negative commandments is made captive, he is not obligated to ransom her, but must rather pay her her kĕṯubbah, and she must then ransom herself. But is not a captive woman forbidden to a priest? Why then must he nevertheless ransom her? Because she was not forbidden to him previously, and it is her becoming a captive that has caused her to become forbidden.

23. If the wife dies, the husband is obligated to take care of her burial and to arrange for eulogy and lamentations for her, as is the custom in all that country. Even if he is of the poorest in Israel, he must provide not less than two flute players and one professional wailing woman. If he is wealthy, everything must be done according to his status. If her status was higher than his, she must be buried in accordance with her own status, because a woman may ascend in status with her husband, but not descend, even after her death.

24. If he refuses to take care of his wife's burial, and another person voluntarily attends to her interment, the costs thereof must be forcibly seized from the former to repay the latter, in order that she should not be thrown to the dogs. If he is away in another country when his wife dies, the court may seize his property, sell it without public announcement, and take care of her burial in keeping with the husband's means, his status, or her own status, as the case may be.

CHAPTER XV

1. A woman who after marriage gives her husband permission to withhold her conjugal rights from her, is permitted to do so.

When does this apply? When he has children, for in that case he has already fulfilled the commandment to be fruitful and multiply. If, however, he has not yet fulfilled it, he is obligated to have sexual intercourse with her according to his schedule until he has children, because this is a positive commandment of the Torah, as it is said, *Be fruitful and multiply* (Gen. 1:28).

2. The obligation to be fruitful and multiply is incumbent upon the man, but not upon the woman.

At what age must a man assume this obligation? From the age of seventeen upwards. If he passes the age of twenty without taking a wife, he is guilty of transgressing and nullifying a positive commandment. If, however, being engaged in the study of Torah and preoccupied with it, he is apprehensive of taking a wife, lest the burden of earning a livelihood for her should prevent him from studying Torah, he is permitted to delay his marriage, because he who is engaged in the performance of one religious duty, is released from the performance of another; how much more so if it concerns the study of Torah.

3. He who is so desirous of studying Torah constantly that he is immersed in it like Ben 'Azzai, and cleaves to it all his life, neglecting to take a wife unto himself—there is no sin in

his hand, provided that his passion is not wont to overpower him. If, however, his passion repeatedly overcomes him, he is obligated to take a wife, even if he already has children, lest he should fall victim to unchaste thoughts.

4. How many children must a man have before he can be regarded as having fulfilled this commandment? One male child and one female, as it is said, *Male and female created He them* (Gen. 5:2). If the son turns out to be a eunuch, or if the daughter is barren, he has not fulfilled the commandment.

5. If children were born to him but subsequently died, leaving their own children, he has fulfilled the commandment to be fruitful and multiply, because grandchildren are counted the same as children.

When does this apply? When these grandchildren are male and female and were born to his male and female children; and even if the grandson is his daughter's child and the granddaughter his son's child, he has fulfilled the commandment to be fruitful and multiply, seeing that they are the offspring of both of his children.

If, however, he had a son and a daughter, both dead, and only one of them has left two children, male and female, he has not yet fulfilled the commandment.

6. If a man sires children while a heathen, and subsequently both he and his children become proselytes, he is counted as having fulfilled this commandment. If he sires children while a slave and is manumitted together with his children, he has not fulfilled the commandment to be fruitful and multiply, until he begets children after his manumission, because a slave has no family relationship.

7. One should not marry a sterile woman, an old woman, a barren woman, or a minor female who is incapable of giving birth, unless he has already fulfilled the commandment to be fruitful and multiply, or unless he has another wife by whom he can fulfill this commandment.

If he marries a woman and she abides with him for ten years without giving birth, he should divorce her and pay her kĕṯubbah, or else take another wife capable of bearing children.

If he refuses to divorce her, he should be compelled to do so, by being scourged with a rod until he divorces her.

If he says, "I will have no sexual intercourse with her, but will abide with her in the constant presence of witnesses, so as never to seclude myself with her"—whether it is she who says so or he, no attention need be paid to it. He must divorce her, or else marry another wife capable of giving birth.

8. If she abides with him for ten years without giving birth, and if he ejects his semen with the force of an arrow, the presumption is that the deficiency is hers, and she must therefore be divorced without payment of the kĕṯubbah. She is entitled, however, to the supplementary amount, because she should not be inferior to a barren woman of whose deficiency he was unaware, and who is entitled to the supplementary amount, as will be explained.

If he does not eject with the force of an arrow, the presumption is that the deficiency is his alone, and he must divorce her, pay her the entire kĕṯubbah, that is, the statutory as well as the supplementary amount.

9. If he says, "The lack of birth is due to her," while she says, "It is due to him, because he does not eject with the force of an arrow," she is to be believed. He may, however, pronounce a general ban upon any woman who asserts something without knowing it of a certainty, and then pay her the kĕṯubbah.

If she says, "I do not know whether it is due to me or to him," she is not entitled to the statutory kĕṯubbah, as we have already said, on the principle that the money must remain with the person in whose possession it is, until she can claim of a certainty that he does not eject with the force of an arrow.

Why is she to be believed in this claim? Because she can feel whether he does or does not eject with the force of an arrow, whereas he cannot.

10. If after ten years of marriage, a woman comes forth to demand that her husband divorce her because she has not given birth, and claims that he does not eject with the force of an arrow, her wish must be honored, for even though the obligation to be fruitful and multiply does not apply to her, nevertheless she has need of children for her old age. He must therefore be compelled to divorce her, and he must pay her only the statutory kĕṯubbah, because he did not write down the supplementary amount on the understanding that she would leave at her own will and take it with her.

11. If within these ten years he had gone away on a business trip, or was ill, or she was ill, or both were imprisoned, this time is not included in the ten years.

12. If she miscarries, he must count from the day of the miscarriage. If she miscarries three times in succession, the presumption is that she is prone to miscarry—perchance he is not destined to build a family by her. He must therefore divorce her and pay her the kĕṯubbah.

13. If he says, "She had a miscarriage within the ten years," his intention being that he should continue to abide with her, while she says, "I did not miscarry," she is to be believed, because no woman will draw the presumption of barrenness upon herself.

If he says, "She miscarried twice," while she says, "I miscarried three times," she is to be believed, because no woman will draw the presumption of proneness to miscarry upon herself. He must therefore divorce her and pay her the kĕṯubbah.

In all these cases he may subject her to an informal oath to the effect that she did not miscarry, or that she miscarried thrice, inasmuch as it is this claim that makes him liable to pay the kĕṯubbah.

14. If a woman who had been married to A and remained with him ten years without giving birth to children, is divorced by him, she is allowed to marry B. If after abiding with B for

ten years, she likewise bears no children, she may not marry C. If she does so nevertheless, she must be divorced without payment of the kĕṯubbah, unless C has also another wife or has already fulfilled the commandment to be fruitful and multiply.

15. If a woman comes before the court and says, "My husband is incapable of normal sexual intercourse, such as leads to childbirth," or "ejects his semen without the force of an arrow," the judges should endeavor to effect a compromise by telling her, "It is proper for you to bear with your husband until you will have abided with him for ten years without giving birth, and only thereafter make your demand." The matter should be negotiated with her—she should not be compelled to abide with him, nor should she be treated as a rebellious wife. Rather, the matter should be prolonged until they agree on a compromise.

16. Even if a man has already fulfilled the commandment to be fruitful and multiply, he is still obligated by Scribal enactment not to cease being fruitful and multiplying as long as he has the power to do so, because whosoever adds one soul to Israel has as much as builded a whole world. It is also a precept of the Sages that no man should live without a wife, in order that he should not come to unchaste thoughts, nor should a woman live without a husband, in order that she should not become subject to suspicion.

17. It is the duty of every man to warn his wife against infidelity, and the Sages have said, "A man should warn his wife only because the spirit of purity has entered into him." Nevertheless, he should not carry his jealousy of her beyond reason, nor should he compel her to have intercourse with him against her will. Rather, he should do it only with her consent, accompanied by pleasant discourse and enjoyment.

18. The Sages have likewise ordained that the wife should behave with discretion within her house, and should not indulge in jesting and levity in the presence of her husband; nor should she demand intercourse by word of mouth, or keep talk-

ing about it. She should not deny herself to her husband merely in order to torment him, so as to make him love her all the more; she should rather submit to him whenever he desires. She should moreover be circumspect with his relatives and the members of his household, so that no spirit of jealousy should overcome him. She should keep away from anything unseemly or even approaching unseemliness.

19. The Sages have likewise ordained that a man should honor his wife more than his own self, and love her as himself; that if he has money, he should increase his generosity to her according to his wealth; that he should not cast undue fear upon her; and that his discourse with her should be gentle—he should be prone neither to melancholy nor to anger.

20. They have likewise ordained that the wife should honor her husband exceedingly and hold him in awe, that she should arrange all her affairs according to his instructions, and that he should be in her eyes as if he were a prince or a king, while she behaves according to his heart's desire, and keeps away from anything that is hateful to him. This is the way of the daughters and the sons of Israel who are holy and pure in their mating, and in these ways will their life together be seemly and praiseworthy.

CHAPTER XVI

1. The property that a wife brings to her husband, whether real estate, or movables, or slaves, even though registered in the kĕṯubbah document, is nevertheless called not kĕṯubbah, but dowry. If the husband becomes surety for the dowry, so that it comes under his authority, the rule is that if it depreciates, he must bear the loss, and if it goes up in value, the increment belongs to him. This is what is called "iron sheep property." If, however, he does not become surety for the dowry, and it re-

mains under the wife's authority, the rule is that if there is a depreciation, she must bear the loss, and if there is an increment, it belongs to her. Such property is called "*mĕlōg̱* property."

2. Likewise, all property belonging to the wife and not brought by her to her husband, nor registered in the kĕṯubbah, but remaining in her own possession, or property that came to her by way of inheritance subsequent to her espousal, or by way of gift—all such property is likewise called mĕlōg̱ property, since it all remains under her authority. The term kĕṯubbah covers only the statutory amount of the kĕṯubbah, which is one hundred or two hundred zuz, together with the supplementary amount.

3. We have already made it known that it was the Sages who have instituted the kĕṯubbah for the wife, and that the supplementary amount is subject to the same rule as the statutory kĕṯubbah. They have also ordained that she may not claim it whenever she wishes to do so, but rather, that it is like a debt payable at a certain time. The kĕṯubbah is accordingly payable only upon the husband's death or at the time he divorces her. They have ordained further that if the husband owns some fields of fine quality, some of inferior quality, and some of medium quality, and the wife comes forth to collect her kĕṯubbah from him, she may collect it only from the inferior quality property, which is called in Hebrew *zibboriṯ*.

4. They have similarly ordained that when she comes to collect her kĕṯubbah after her husband's death, she may not collect it until she swears an oath while holding a sacred object, to the effect that he had not left anything with her, and that she had not sold her kĕṯubbah to him, nor waived her right to it. The court must then assess everything that is on her person and subtract its value from her kĕṯubbah. If, however, he has, of his own will, divorced her, she may collect without an oath and without assessment of the garments upon her back, inasmuch as he had bought them for her and she has acquired them legally, and it is he who wishes to divorce her, not she.

5. The Sages have similarly ordained that a widow may collect her kĕṯubbah only out of land, and may not collect it out of the appreciation of the property after her husband's death. Nor may the daughters receive maintenance after their father's death out of the appreciation of the property after his death. Nor may the widow claim her kĕṯubbah out of the appreciation of the property in the buyer's possession, even though a creditor may claim such appreciation. These are matters in which the Sages have been lenient in the case of the kĕṯubbah.

6. Another matter in which the Sages have been lenient concerning the kĕṯubbah is that a woman may collect her kĕṯubbah only in coins of lesser value. How so? If a man marries a woman in one place and divorces her in another place, the rule is as follows: If the money of the place of marriage is worth more than the money of the place of divorce, he may pay her with the money of the place of divorce; if the money of the place of divorce is worth more than the money of the place of marriage, he may pay her with the money of the place of marriage. When does this apply? When the money is mentioned in the kĕṯubbah without any specification. If, however, he specifies in the kĕṯubbah a certain known coin, whether for the statutory kĕṯubbah or for the supplementary amount, the same rule applies as that governing a loan made by the creditor to the debtor in a certain known coin, where the debtor must repay the loan in the same coin, as shall be explained in the Laws Concerning Loans.

7. The Geonim in all the academies have ordained that the wife may collect her kĕṯubbah after her husband's death even out of movables, just as they have ordained that the creditor may collect out of movables, and this enactment has spread among most of Israel.

Likewise, all the other conditions stipulated in the kĕṯubbah are in this respect subject to the same rule as the kĕṯubbah itself, and may be collected out of movables as well as out of land, with the sole exception of "the kĕṯubbah of male children," where we did not find the manner of their inheritance rights

uniform in all academies. Therefore, I say that in this matter the rule of the Gemara remains in force, namely, that the heirs may collect their mother's kĕṯubbah out of real estate only.

8. It has long since become the practice in all the places that we know of and have heard from, to write in the kĕṯubbah, "out of either land or movables." This is an important enactment, and they were great and wise men who have introduced it, because this makes it a stipulation involving money, and the result is that the widow is thus enabled to collect out of movables by virtue of this stipulation, and not by virtue of an enactment by latter-day Sages.

9. Therefore, if the husband had not set down this stipulation in the kĕṯubbah, but had married the wife without it, the rule is as follows: If he knew of this enactment of the Geonim, she may collect in accordance with it; if he did not know of it, or if the matter is in doubt, it must be given ample deliberation. For an enactment of the Geonim does not have sufficient authority to be applicable even when it has not been specifically stipulated—as do the stipulations of the kĕṯubbah instituted by the Great Sanhedrin—to the degree that would empower us to collect money from the heirs.

10. The Sages have further enacted that all of the husband's possessions should serve as guarantee and surety for the kĕṯubbah. Even if the kĕṯubbah amounts to only a mina, and he has land worth thousands of gold pieces, all of it is surety for the kĕṯubbah. Hence whatever of his possessions he may sell after the marriage—even though his sale is valid, and he has the right to sell all of them if he so wishes—she may seize it in payment of her kĕṯubbah if he divorces her or after his death, in case she finds no other unencumbered property. In case of such seizure, however, she must swear an oath while holding a sacred object, as is the rule for all creditors. The purpose of this enactment is that the kĕṯubbah should not seem light in his eyes.

11. When the court or the heirs subject the widow to an oath at the time she comes to collect her kĕṯubbah, the oath should be

administered invariably outside the court, because the courts used to avoid subjecting her to such an oath on the ground that she might not be duly scrupulous about it. If, however, the orphans wish to subject her to a vow, she may vow for them anything they desire, and they may administer the vow to her in court, after which she may receive payment of her kĕṯubbah.

12. If the widow dies before swearing the oath, her heirs may inherit no part of her kĕṯubbah, because she has no kĕṯubbah until she swears the oath. If she remarries before swearing the oath, she may swear it after remarriage, and may receive payment whenever she wishes. She may not, however, make a vow and then collect, lest her new husband should release her from the vow.

13. If the husband had designated a certain piece of land as surety for her kĕṯubbah, whether he had defined it by all four boundaries, or by only one, she may collect her kĕṯubbah from it without an oath. Similarly, if he had assigned for the kĕṯubbah certain movables, and these identical movables are still in existence, she may take them without an oath.

Likewise, if these movables had been sold and other movables were bought with the money realized, and it is known that these latter were bought with proceeds of the former, she may take the latter without an oath.

14. A wife who impairs her kĕṯubbah may not be paid except after she swears an oath. How so? If she produces a kĕṯubbah amounting to one thousand zuz, and the husband says, "You have already received all of it," while she says, "I received only so-and-so much," she may not be paid the balance except upon swearing an oath that she has indeed received only partial payment, even if there are witnesses to this partial payment, and even if she herself has been scrupulous in her accounting of what was paid down to half a pĕruṭah.

15. If the husband says, "You have received the total amount," while she says, "I received nothing," and one witness testifies

that she had received full or partial payment, she may not be paid her entire kĕṯubbah except after swearing an oath.

16. A wife who collects her kĕṯubbah in her husband's absence may be paid only after swearing an oath. How so? If a man divorces his wife and departs, the court may seize his property after she has taken the oath, and let her collect her kĕṯubbah out of it, provided that the husband is in a place so distant that it would require a great effort to notify him. If, however, he is in a place nearby, where he can be easily notified, a notice should be sent to him. If he nevertheless does not come, she may take the oath and then collect.

17. A wife who reduces her kĕṯubbah may be paid without an oath. How so? If she produces a kĕṯubbah for a thousand zuz, and the husband says, "You have already been paid all of it," while she says, "I have received nothing, but I claim only five hundred zuz; as for the thousand zuz recorded in the kĕṯubbah, there was an agreement of trust between us," she may be paid without an oath.

If, however, she says, "My kĕṯubbah calls for only five hundred zuz," she may collect nothing on this document which calls for a thousand zuz, because she has in effect rendered it null and void, and it is as if she had admitted that the document is fraudulent. Therefore, he need only swear an informal oath, and is then exempt.

18. Wherever we have said, "She may not be paid except after swearing an oath," the court must tell her, "First take an oath, and then you may collect." Wherever we have said, "She may be paid without an oath," the court must tell the husband, "Rise and pay her, for your claim cannot be honored until you bring proof for your statement."

19. If the husband, of his own accord, says, "Let her take an oath about my claim," she must be told, "First take an oath, and then you may collect," and she must take the oath while holding a sacred object.

If she had stipulated to him that she is to be entitled to collect her kĕṯubbah without an oath, or that she is to be trusted in anything she may claim, she may collect from him without any oath whatsoever. If, however, she comes to collect from his heirs, she must first swear an oath, and only then may she collect.

20. If she had stipulated to him that she is to collect her kĕṯubbah from his heirs without an oath, or that she is to be believed in everything that she may claim from his heirs, she may accordingly collect from them without an oath. If, however, she comes to seize mortgaged property, she may do so only after swearing an oath, for even though the husband had trusted her, the stipulation made by him has effect only upon himself and upon his heirs, but has no effect when it involves a financial loss to other parties.

21. A widow who produces a kĕṯubbah may swear an oath and may then collect her kĕṯubbah indefinitely, even a hundred years hence, whether she resides in her husband's house or in her father's house.

If she cannot produce a kĕṯubbah, she is entitled to nothing, not even to the statutory kĕṯubbah, and not even if she demands it on the very day of her husband's death.

The same applies to a divorcée, who is not entitled even to the statutory kĕṯubbah until she produces the document itself.

22. When does this apply? In places where it is the practice to write a kĕṯubbah. Where the practice is not to write a kĕṯubbah but to rely on the terms established by the court, she may collect the statutory kĕṯubbah even if she cannot produce the documentary kĕṯubbah, whether she has been divorced or widowed, whether she resides in her husband's house or in her father's house. She is not, however, entitled to the supplementary amount unless she produces clear proof.

23. What is the time limit for a widow entitled to collect the statutory kĕṯubbah, in a place where no kĕṯubbah is written? If she resides in her husband's house, she may do so indefinitely;

if she resides in her father's house, the time limit is twenty-five years. If she comes to collect after twenty-five years, she is entitled to nothing, because had she not waived her right to it, she would not have kept silent all this time. Inasmuch as she is not residing with the heirs, she cannot claim, "I was embarrassed to demand payment from them while they reside with me in the same house."

24. Therefore, if the heir himself delivers her maintenance to her father's house and personally attends to her needs, she may demand her kĕṯubbah even after twenty-five years, because the reason why she kept silent and did not put in a claim is that she was ashamed before the heir.

25. If she says, "I was a virgin when I was married, and my statutory kĕṯubbah is therefore two hundred zuz," while the husband or his heirs say, "She was a nonvirgin when she was married, and is therefore entitled to only one hundred zuz," the rule is as follows: If there are witnesses who saw that the customs observed at her wedding were those usually observed by the inhabitants of that city at the marriage of a virgin, such as special types of rejoicing, or the wearing of crowns, or specific garments, or any other usage employed exclusively for a virgin, she may collect two hundred zuz. If she has no witnesses to this effect, she may collect only a mina.

If the husband is living, she may make him swear an oath authorized by the Torah, inasmuch as he has admitted part of the claim. An adult witness who was a minor at the time may in such a case testify by saying, "I remember that when I was a child So-and-so was married according to the customs used for virgins." All this applies only in a place where no kĕṯubbah is written, as we have said.

26. If a woman says to her husband, "You divorced me," she is to be believed, because a wife would not act brazenly to her husband's face. Therefore, if a woman who has produced a kĕṯubbah but has no geṭ with her, says to her husband, "You divorced me, but my geṭ was lost; now pay me my kĕṯubbah,"

and he says, "I did not divorce you," he must pay her the statutory kĕṯubbah; he is not, however, obligated to pay her the supplementary amount, until she brings evidence that he had divorced her, or until she produces simultaneously both the geṭ and the kĕṯubbah.

27. If the husband says to her, "This is how it happened: I divorced her and paid her the entire kĕṯubbah, both the statutory and the supplementary amount, and she wrote me a receipt, but it was lost," he is to be believed, inasmuch as he could have said, "I did not divorce her," and thereby released himself from the obligation to pay the supplementary amount. He should therefore make her swear an oath while holding a sacred object, and then pay her the statutory kĕṯubbah. He himself should then swear an informal oath concerning the supplementary amount.

28. If she produces a geṭ, but has no documentary kĕṯubbah on hand, the rule is as follows: If it is the custom of that place not to write a kĕṯubbah, she may collect her statutory kĕṯubbah with the geṭ that she has. If the custom there is to write a kĕṯubbah, she is not entitled even to the statutory kĕṯubbah until she produces a documentary kĕṯubbah, as we have explained. The husband must therefore swear an informal oath against her claim, and is then exempt.

29. If she produced two geṭs and two kĕṯubbahs, she may collect both kĕṯubbahs. If she produces two kĕṯubbahs and only one geṭ, she may collect one kĕṯubbah only. Which one of them may she collect? If the amount of both is the same, the later one cancels the earlier one, and she may collect only from the date of the later one. If one kĕṯubbah is for a larger amount than the other, she may collect whichever of the two she chooses, and the other then becomes null and void.

30. If she produces two geṭs and only one kĕṯubbah, she is entitled to one kĕṯubbah only, because when a man divorces his wife and remarries her without any stipulation, the assumption is that he has remarried her on the terms of the first kĕṯubbah.

If she produces a get and a kĕṯubbah after the husband's death, the rule is as follows: If the get antedates the kĕṯubbah, she may collect her statutory kĕṯubbah on the basis of this get—provided that the custom of that place is not to write a kĕṯubbah—and she may also collect the entire amount of the kĕṯubbah, on the ground that she is entitled to it because of her husband's death. If the kĕṯubbah antedates the get, she is entitled to one kĕṯubbah only, because he has remarried her on the terms of the first kĕṯubbah.

31. A woman is to be believed when she says, "My husband is dead," so that she might remarry, as shall be explained in the Laws Concerning Divorce; and it is one of the conditions of the kĕṯubbah that if the wife remarries after her husband's death, she is entitled to all that he had written for her in her kĕṯubbah. Therefore, if she comes to court and says, "My husband is dead; give me now permission to remarry," without making any reference whatsoever to a kĕṯubbah, she may be given permission to remarry, then made to swear an oath, and thereafter paid her kĕṯubbah.

If, however, she comes and says, "My husband is dead; pay me now my kĕṯubbah," she may not be permitted even to remarry, because she has come here solely in the matter of her kĕṯubbah, and the presumption remains that her husband is still living. Therefore what she has in mind is not to remarry but to collect her kĕṯubbah from a living husband.

If she comes and says, "My husband is dead; give me now permission to remarry, and pay me my kĕṯubbah," she may be permitted to remarry and to be paid her kĕṯubbah, inasmuch as her primary concern in coming was the matter of her remarriage.

On the other hand, if she comes and says, "Pay me my kĕṯubbah, and permit me to remarry," she may be permitted to remarry, but she may not be paid her kĕṯubbah. But if she has already seized it, it may not be recovered from her.

CHAPTER XVII

1. If a man married to several wives dies, the wife whom he had married first has priority in collecting her kĕṯubbah, and none of the wives may collect without swearing an oath. The last one of them is entitled only to the residue left by the one preceding her, and she too must swear an oath before collecting that residue.

The same rule applies also if there is a note of indebtedness against him. If the debt antedates the kĕṯubbah, the creditor has priority of collection; if the kĕṯubbah antedates the debt, the wife collects first, and the residue goes to the creditor.

2. When does this apply? When the husband had ownership of the land—out of which the claims are to be discharged—at the time of the marriage or at the time the loan was obtained, which fact justifies the rule that whosoever has the prior deed has prior right to the land.

If, however, he married his wives one after another, and obtained the loan—whether before or after marriage—and upon marrying and obtaining the loan, bought the land, they all, wives and creditor, divide it equally, because their several mortgages are all of the same date, since when he bought the land he was already pledged to all of them, and no rule of priority is applicable here.

3. Thus also, if the dates of the kĕṯubbahs and of the notes are the same—and if the hour is the same, in places where it is the custom to specify the hour as well—they all divide equally, because no one has priority here.

At all times, however, if one anticipates and seizes movables to the value of his claim, or of her kĕṯubbah, they may not be repossessed from him, because the rule of priority does not apply to movables.

4. If a man who has divorced his wife has a note of indebtedness against him, and if both the creditor and the wife come to

collect, the rule is as follows: If the husband has cash and land sufficient to cover both the debt and the kĕṯubbah, the creditor takes the cash, and the wife collects her kĕṯubbah out of the land. If he has only land the value of which is insufficient to pay both, and if the rule of priority is not operative in this case, the land is given to the creditor. If aught is left for the wife, she may take it; if not, she must yield to the creditor, because the creditor has suffered a loss by lending his money, while the wife has lost nothing; for more than the man's desire to marry is the woman's desire to be married.

5. Similarly, if a man dies leaving a widow and a creditor, and land not subject to the rule of priority, the widow must yield to the creditor who collects his loan first.

6. Since the Geonim have enacted that both wife and creditor may collect out of movables, and since it is known that the rule of priority does not apply to movables, it follows that if the husband leaves insufficient movables to pay both of them, the creditor must be paid his entire claim first, and if there is aught left to pay the wife her kĕṯubbah, she may take it; if not, she must yield to the creditor.

7. If the kĕṯubbah includes iron sheep property, and she claims that it was lost, or that the husband had appropriated it, she is, as far as her iron sheep property is concerned, in the same position as the other creditors. She must therefore swear an oath that she had not already seized it, nor given it away as a gift, nor waived her right to it, and may then divide the estate equally with the creditors.

8. If a man who has several wives dies or divorces them, and the rule of priority does not apply to them, and if his estate is insufficient to pay all the kĕṯubbahs, how are they to divide it? The matter should be resolved thus: If the money, divided into as many equal shares as there are wives, would suffice to pay the wife whose kĕṯubbah bears the lowest figure, enough to cover that figure, or less, they should share the money equally among

them. If there is more money than that, it should be divided in such a way that the wife with the lowest kĕṯubbah would receive the full amount of it, and the residue should then be divided again among the rest in the same manner as it was done in the first instance.

How so? Let us suppose that a man had four wives. The kĕṯubbah of A amounts to four hundred zuz, of B three hundred zuz, of C two hundred, and of D one hundred, or a thousand zuz in all. If he dies or divorces them all, leaving four hundred zuz or less, they share equally, each one receiving one hundred zuz or less.

If he leaves eight hundred zuz, it follows that if divided equally, D would receive two hundred zuz, and yet her kĕṯubbah amounts to only one hundred. What then is to be done? Four hundred, out of the eight hundred, zuz are divided equally, one hundred per share, with the result that D receives the full amount of her kĕṯubbah and goes her way.

There is now left four hundred zuz for three wives, each of whom already has one hundred zuz. If these four hundred zuz were divided equally among A, B, and C, C would receive in all two hundred thirty three and one-third zuz, and yet her kĕṯubbah amounts to only two hundred. Therefore three hundred, out of the four hundred, zuz are divided equally among the three, with the result that C now receives the two hundred due her and likewise goes her way.

Now there is left one hundred zuz for two wives and this hundred is divided equally between the two, with the result that A has two hundred and fifty zuz, and so has B; C has two hundred, and D one hundred. This manner of division applies in all cases, even if there are a hundred wives.

9. If a man becomes surety to a woman for her kĕṯubbah, he is not liable for payment, even if his promise was validated by a symbolic act of barter, because the purpose of his promise was to perform a religious duty, and the woman has suffered no loss by his default.

If, however, he becomes surety for his son's kĕṯubbah, and validates his promise with a symbolic act of barter, he is liable for payment, because a father readily obligates himself for his son, and when he makes this promise he is resolved to make it good.

A *ḳabbĕlan* of a kĕṯubbah, on the other hand, is liable for payment, even if he had not performed an act of symbolic barter. What is a ḳabbĕlan? One who says to a woman, "Marry So-and-so, and I will pay this kĕṯubbah."

If, however, he says to her, "I will be surety for this kĕṯubbah," or "I will settle this kĕṯubbah," or "I will be liable for it," or uses a similar expression, he is exempt, unless he is the husband's father.

Therefore, if the husband divorces his wife, he should make her vow that she is to derive no benefit from him; and only then should her kĕṯubbah be settled by the ḳabbĕlan, or by the husband's father, if he is surety for it, lest the husband should subsequently remarry her, showing that the couple had conspired to defraud the man who became surety of his property.

10. Similarly, if one consecrates his property and then divorces his wife, he should make her vow that she is to derive no benefit from him, and only then should she recover from the person who has redeemed the property from the Sanctuary, lest the couple should conspire to defraud the latter.

If, however, a man divorces his wife, and she then comes forth to seize her due from the purchasers, he is not obligated to make her vow; rather, she need only swear an oath, and may then seize her due. Thereafter she may, if she so desires, remarry her husband, seeing that the purchasers had known that he was liable for his wife's kĕṯubbah, and thus brought the loss upon themselves when they bought property mortgaged to her.

11. If a husband sells his property, and his wife thereupon issues a writ to the purchaser stating, "I have no claim whatsoever against you," thus consenting to the husband's act, she may nevertheless seize her due from the purchaser, even if her consent had been validated by a symbolic act of barter, because what she

had written to the purchaser might have been meant to prevent a quarrel between herself and her husband, and she may therefore say, "I did it merely to afford satisfaction to my husband."

If, however, the wife first signifies by a symbolic act of barter that she has no lien upon this property, and then the husband sells it, she may not seize it.

Thus also, if the husband sells the property and tells his wife to issue a writ to the purchaser stating, "I have no claim whatsoever against you," but she does not issue it nor consent to his act, so that the sale is impaired; and if the husband thereupon sells the property to another man, whether it is the very same field or another, and after this second sale she consents to his act, and signifies by a symbolic act of barter that she has no lien upon this field, she may not seize it, because in this case she cannot say, "I did it merely to afford satisfaction to my husband," inasmuch as at the first sale, to which she did not consent, she did not follow her husband's wishes.

12. If a man who has two wives, A and B, sells his field, and A signifies by a symbolic act of barter that she has no lien upon this field and is not entitled to seize it from the purchaser, the sale being of the kind which does not permit her to claim, "I did it merely to afford satisfaction to my husband"; and if thereupon the husband dies or divorces both wives, B may recover her due from the purchaser, since she had not performed any symbolic act of barter for the latter. A may then recover from B, because A has priority, having waived her lien to no one but the purchaser. Thereupon, after the field has reverted to A, the purchaser may in turn recover it from her, because she had yielded her right to him and validated it with a symbolic act of barter. This cycle can then be repeated over and over again, until they all come to some sort of agreement.

13. A widow, whether after marriage or after espousal, must swear an oath, and may then sell as much of her husband's land as would settle her kĕṯubbah. This should be done by authority of a court, whether composed of experts or nonexperts, provided that the three members of it are trustworthy men versed in as-

sessing land values. The property of the orphans is surety for the sale.

A divorcée, however, may sell by authority of a court composed of experts only, and any woman selling by authority of a court may do so only upon prior announcement of the sale. The procedure of selling by authority of the court will be explained in the Laws Concerning Loans.

On the other hand, a woman who sells without the authority of the court, needs no prior announcement. Nonetheless, such a sale requires the presence of three men who are trustworthy and versed in assessing values.

14. If a widow sells land privately in satisfaction of her kĕṯubbah, the rule is as follows: If she has sold it at its fair value, her sale is valid, but she must swear the widow's oath after the sale; all this, provided that she has sold it to someone else. If, however, she has assessed the land for sale to herself, her act is invalid, even if she had made a prior announcement of the sale.

15. If her kĕṯubbah amounts to two hundred zuz, and she sells land worth one hundred zuz for two hundred, or land worth two hundred for one hundred, her kĕṯubbah is deemed settled, and she has no further claim, provided she swears the widow's oath.

If her kĕṯubbah amounts to one hundred denar, and she sells land worth one hundred and one denar for one hundred, her sale is null and void, even if she says, "I will repay the extra denar to the heirs."

16. If her kĕṯubbah amounts to four hundred zuz, and she sells a piece of land worth a mina to one person, another piece worth a mina to another, and so forth, each parcel of land at its fair value, except that to the last purchaser she sells a piece of land worth one hundred and one denar for one hundred, the last sale is null and void, but all the other sales are valid.

17. A woman may sell her kĕṯubbah or give it as a gift to another person. If thereafter her husband dies or divorces her, that person may come forth and collect it. If, however, she dies during

her husband's lifetime, or before swearing the required oath, that person is not entitled to anything.

18. If she has sold part of her kĕṯubbah, or has pledged part of it, or has given part of it as a gift to another person, she may sell as much of her husband's land as would cover her kĕṯubbah, by authority of either a court of experts or three trustworthy men, and may then collect the balance due her. She may make such sales in satisfaction of her kĕṯubbah even a number of times, by the authorization of either a court or three trusted men who are versed in assessing land values.

19. If a wife sells her kĕṯubbah, whether to strangers or to her husband, she does not thereby forfeit her right to the other conditions stipulated in it. If, therefore, she has a male child, he inherits out of his father's property, over and above his share in it, as much as is his due from the kĕṯubbah that was sold, in accordance with that condition.

If, however, a wife waives her kĕṯubbah in favor of her husband, she forfeits all the conditions stipulated therein, and has no claim against him even for maintenance.

The wife who waives her kĕṯubbah requires neither a symbolic act of barter nor witnesses, just like all others who waive their rights and who require neither a symbolic act of barter nor witnesses, but only a verbal declaration to that effect. This obtains provided that this declaration expresses firm resolution, and is not couched in jocular, humorous, or ambiguous terms, but in terms denoting a resolute frame of mind.

CHAPTER XVIII

1. A widow is entitled to her maintenance out of the property of the heirs throughout the time of her widowhood, until she collects her kĕṯubbah.

Once she demands her kĕṯubbah in court, she no longer has any claim to maintenance. The same applies if she has sold her entire

kĕṯubbah, or has pledged it, or has mortgaged it to another person, provided she has told the mortgagee, "You are to collect your claim out of this." Whether she has executed any of these transactions before a court of experts or out of court, during her husband's lifetime or after his death, she has no claim to maintenance from the heirs. If, however, she has sold only part of her kĕṯubbah, she is entitled to maintenance. Once the widow is espoused, she forfeits her maintenance.

2. Just as the widow is entitled to maintenance out of her husband's estate after his death, so is she entitled to garments, utensils, and living quarters, or she may continue to reside in the living quarters occupied by her in her husband's lifetime, and use the bolsters and cushions, and the services of the slaves and bondswomen, used by her in her husband's lifetime.

If the dwelling collapses, the heirs are not obligated to rebuild it. If she says, "Give me leave, and I will rebuild it at my own expense," no attention need be paid to her. Similarly, she may not repair it nor plaster it, but must either dwell in it as it is or leave it.

If the heirs sell the widow's dwelling, their sale is null and void.

3. If the house collapses, or if her husband did not own the house, but merely rented it, she must be provided with a dwelling suitable to her station. Her maintenance and her garments must also suit her station. If her husband's status was higher than hers, she must be provided for according to his status, because she may ascend in status with her husband, but not descend, even after his death.

4. "The blessing of the house is greater." How so? If five persons, when eating separately, require one ḳaḇ per person for their maintenance, they need only four ḳaḇ when all five of them live in the same house and eat together. The same rule applies to other household needs.

Therefore, if a widow says, "I will not budge from my father's

house; fix my maintenance, and deliver it to me there," the heirs may answer her, "If you live with us, you are entitled to full maintenance; if not, we will provide for you only according to the blessing of the house."

If she claims that her refusal is due to the fact that she is a young girl and they are young boys, they may provide her with maintenance sufficient for herself alone, while she remains in her father's house.

The surplus of the widow's maintenance and clothing belongs to the heirs.

5. If a widow falls ill, the rule is as follows: If she requires unlimited treatment, it is deemed the same as maintenance, and the heirs are liable for it. If, however, she needs treatment of only limited duration, she must defray it out of her kĕṯubbah.

If she is made captive, the heirs are not liable for her ransom, even if she is a yĕḇamah. Even if she is captured in her husband's lifetime, and he dies while she is in captivity, they are not obligated to pay her ransom out of his estate. She must be ransomed at her own expense, or else she may collect her kĕṯubbah and ransom herself therewith.

6. If a widow dies, her husband's heirs are obligated to take care of her burial. If she had sworn the widow's oath and then died, her own heirs inherit her kĕṯubbah, and it is they who are liable for her burial, and not the husband's heirs. The widow's earnings belong to the husband's heirs. If an heir says to the widow, "Take your earnings and use them for your maintenance," no attention need be paid to him, but if she herself is willing to accept such an arrangement, her wishes must be respected.

7. The same services that a wife is obligated to perform for her husband, a widow is obligated to perform for the orphans, except serving the cup, spreading the couch, and washing his face, hands, and feet.

8. Anything a widow may find, and the income from property brought by her to her husband, belongs to her, and the heir has no claim whatsoever to them.

9. As for the property itself, which is her dowry, she is entitled to take it without an oath, and the heirs have no claim to it ever, unless it has increased in value during the husband's lifetime and constitutes iron sheep property, the appreciation of which accrues to the husband.

If the widow dies without having sworn an oath, her heirs inherit her dowry, even though it is iron sheep property. If there is any appreciation, it goes to the husband's heirs.

10. If a widow seizes movables to defray her maintenance, whether she does so in her husband's lifetime or after his death, they may not be recovered from her, even if she seizes as much as the worth of a talent of gold. Rather, the court should record whatever she has seized, fix the amount of her maintenance, and keep an account for her, the while she maintains herself out of what she has on hand, until she dies or until her right to maintenance is terminated. The heirs may then take the residue.

11. Likewise, if she seizes movables in payment for her kĕṯubbah while her husband is living, and he then dies, she may collect her kĕṯubbah out of them. If, however, she seizes them for the same purpose after his death, she may not collect out of them.

12. Even though the Geonim have ordained that she may collect her kĕṯubbah, including the conditions attached thereto, out of movables, and therefore the widow may receive her maintenance out of the movables, even if she does not seize them; nevertheless, if the husband has left movables, and she does not seize them, the heirs may take them, but must thereafter provide her with maintenance. She may not prevent them from doing so by saying, "Let the movables be deposited with the court for the duration of my maintenance out of them, lest they should be lost and I be deprived of my maintenance." Even if she had explicitly stipulated with her husband that she is to receive her maintenance out of movables, she may not hinder them. All the courts have so ruled at all times.

13. If, however, he has left land, she may stop them from selling it. But if they have already sold it, she may not recover it from

the purchasers, because wife and daughters may receive their maintenance from unencumbered property only.

14. If he has left several wives, they receive equal maintenance, even if he had married them one after another, since priority does not apply to movables.

15. If a widow is subject to levirate marriage, the rule is as follows: For the first three months her maintenance lies upon the estate of her husband; if her pregnancy becomes recognizable, and likewise if she was left pregnant, her maintenance continues until she is delivered. If she gives birth to a viable child, she continues to receive her maintenance for the duration of her widowhood, just like other wives.

If she shows no pregnancy after three months, or if she miscarries, she is entitled to no maintenance either from the husband or from the levir, but must summon her levir either to marry her or submit to ḥălişah.

16. If she summons her levir either to marry her or to submit to ḥălişah, and he appears in court but then absconds, or falls ill, or is away in a country beyond the sea, she is entitled to maintenance from the levir, without any oath whatsoever.

17. If she is due to marry a levir who is a minor, she has no claim for maintenance until he comes of age and has the status of any other levir.

18. If a man at the time of his death assigns a plot of land for his wife's maintenance, by saying, "This particular plot is to be used for her maintenance," he has evidently extended the range of her maintenance. Therefore, if the income therefrom is less than the maintenance that is proper for her, she may collect the deficiency from the other property; but if the income is in excess of the maintenance that is proper for her, she is entitled to all of it.

If, however, he says, "This particular plot of land shall be in lieu of her maintenance," and she remains silent, she is entitled

only to the income from this plot, seeing that he has set a limit to the amount of her maintenance.

19. In the case of a widow who comes to court to claim her maintenance, there are authorities who have ruled that she is to be granted maintenance without being made to swear an oath. This rule should not be relied upon, however, because its authors have confused this case with that of the wife whose husband had gone to a country beyond the sea.

My own teachers have ruled that the court may not grant her maintenance until she takes an oath, inasmuch as she has come to recover from the property of the orphans, and the rule is that whosoever comes to collect from the property of orphans may do so only upon swearing an oath. I am inclined to agree with this, and so is it proper to rule.

20. If a widow comes to court to claim her maintenance, she must first be made to swear an oath, and then property from the estate may be sold without public announcement, and the proceeds given her for maintenance.

Likewise, she may sell property for her maintenance without the authority of a court of experts, but only by the authority of three trusted men, and without a public announcement.

Thus also, if she sells property privately at its fair value in order to provide for her maintenance, her sale is valid, and when the heirs come forth to make her swear an oath she may do so.

21. How much property may be sold to provide for the widow's maintenance? Enough to maintain her for six months, but no more than that. The sale is to be made on the understanding that the purchaser shall provide her with thirty days' maintenance at a time. At the expiration of the first six months, she may sell some more property for another six months' maintenance, and may continue in this manner until the remainder of the estate is equal to the amount of her kĕṯubbah, whereupon she may collect her kĕṯubbah out of that residue and go her way.

22. If a court grants maintenance to a widow, no account need be taken of her earnings until such time as the heirs may come

forth and demand it. If they find that she had earnings, they may take them; and if not, they may go their way.

I say, however, that if the heirs are minors, the court must take account of her earnings, and fix the amount of them in the same manner as it fixes her maintenance.

23. A widow who cannot produce her kĕṯubbah is not entitled to maintenance, since she might have waived her right to the kĕṯubbah, or sold it, or pledged it. Even if the heir makes no counterclaim, we must do so in his behalf, by saying to her, "Produce your kĕṯubbah, then you may swear an oath, and take your maintenance"—unless indeed it is not their custom to write a kĕṯubbah.

24. If a woman and her husband had gone to a country beyond the sea, and if upon her return she says, "My husband is dead," the rule is as follows: If she chooses maintenance, she may have it according to the same rule as governs all widows, and if she chooses otherwise, she may collect her kĕṯubbah.

If she says, "My husband divorced me," she is not to be believed, but should be given maintenance out of his estate, at any rate up to the amount of her kĕṯubbah. For if she is in fact still his wife, she is entitled to maintenance; and if he has, as she claims, divorced her, she is entitled to payment of the kĕṯubbah, inasmuch as she has her kĕṯubbah on hand. She may therefore take her maintenance up to the amount of her kĕṯubbah, and may then go her way.

25. A doubtfully divorced woman whose husband has died, is not entitled to maintenance out of his estate, because no property may be seized from the heir for a doubtful cause. During her husband's lifetime, however, she is entitled to maintenance, until she is assuredly divorced.

26. A needy widow who has let two years go by without claiming her maintenance, or a wealthy widow who has let three years go by without doing so, has thereby yielded her claim to maintenance for the past years, and may demand it only from the

time her claim is made. If she has delayed less than that, even by one day, she has not yielded her right, and may claim and collect maintenance for the past years.

27. If a widow demands maintenance from the heirs, and they say, "We have delivered it," while she says, "I did not receive anything," the rule is as follows: As long as she does not remarry, the orphans must bring proof; otherwise she may swear an informal oath, and then collect her maintenance. Once she has remarried, the burden of proof is upon her; otherwise the orphans may swear an informal oath that they had already delivered her maintenance to her.

28. The rule concerning the supplementary amount of the kĕṯubbah is the same as the rule concerning the statutory kĕṯubbah. Therefore, if a widow demands in court the supplementary amount of the kĕṯubbah together with the statutory kĕṯubbah, or has sold it, or has waived her right to it, or has pledged it, she is entitled to no maintenance.

If she demands only part of it, and leaves the other part, it is the same as if she had demanded part of the statutory kĕṯubbah, and left the other part.

A woman who sells or waives her rights without specification, has sold or waived her right to both the supplementary amount and the statutory kĕṯubbah, because everywhere both are implied in the term kĕṯubbah.

CHAPTER XIX

1. One of the stipulations of the kĕṯubbah is that male children are to inherit the kĕṯubbah of their mother, and her dowry that she had brought in as iron sheep property. After that, they share the rest of the estate equally with their brothers

2. How so? If a man marries a woman whose kĕṯubbah and dowry amount to one thousand zuz, and she gives birth to a son

and dies during her husband's lifetime; and if he then marries another woman, whose kĕṯubbah and dowry amount to two hundred zuz, and she too bears him a son and dies during his lifetime; and if thereupon he himself dies leaving two thousand zuz, the procedure is as follows: His son by his first wife inherits the thousand zuz of his mother's kĕṯubbah; his son by his second wife inherits the two hundred zuz of his mother's kĕṯubbah. The residue is then divided equally between them. As a result the first wife's son has fourteen hundred zuz, and the second wife's son six hundred.

3. When does this apply? When the estate exceeds the sum of the two kĕṯubbahs by one denar or more, so that they can divide the residue equally. If, however, there is no excess of at least one denar, they must divide everything equally, for should each of the heirs inherit his mother's kĕṯubbah first, so that not even one denar would be left to divide among them, this condition would nullify the equal distribution of the estate among the sons as ordained in the Torah.

4. The same rule applies to a man who had married several wives, whether one after another or simultaneously, all of whom died during his lifetime, leaving male children by him. If the estate exceeds the sum of the kĕṯubbahs by at least one denar, each one of the sons inherits his mother's kĕṯubbah, and they all then divide the residue equally among themselves.

5. If in order to be entitled to their mothers' kĕṯubbahs, the orphans say, "Let us add an excess of one denar to our father's estate," no attention need be paid to them. Rather an assessment should be made in court of the value of the property, whatever it was worth at the time of their father's death. Even if the value has increased or decreased after the death of their father, before they came to divide the estate, the assessment should be made only as of the time of their father's death.

6. In the case of an estate which exceeds the sum of all the kĕṯubbahs by one denar or more, even if there is a writ of in-

debtedness against this surplus, it does not decrease it, and each one of the sons may inherit the kĕṯubbah of his mother.

7. If a man was married to two wives, and one died in his lifetime, while the other died after his death, and if he had male children by both of them, the rule is as follows: If the second wife had sworn a widow's oath before dying, her sons have priority in inheriting her kĕṯubbah, because their title is based not on the stipulation of the "kĕṯubbah of male children," but on the law of inheritance as set forth in the Torah; and only thereafter do the sons of the first wife inherit their mother's kĕṯubbah on the basis of that same stipulation. If anything is left after this, they then divide it equally. If the second wife died before swearing the oath, the sons of the first wife alone inherit the kĕṯubbah of their mother, and the rest is then divided equally.

8. If a man was married to two women and had male children by both of them, and if he died first, and his wives after him, the rule is as follows: If the wives had sworn the oath before they died, each heir inherits his mother's kĕṯubbah on the basis of the law of inheritance as set forth in the Torah, and not on the basis of the aforementioned stipulation. Therefore, it matters not whether there is a surplus or not, and the heirs of the first wife have priority over the heirs of the second.

If the mothers had not sworn the oath, the sons divide everything equally, and there is no inheritance of any kĕṯubbah, because a widow has no kĕṯubbah until she swears the oath.

9. If one of the wives swore the oath and the other did not, the sons of the one who took the oath inherit their mother's kĕṯubbah first, and the rest is divided equally. If the heir's mother, whose kĕṯubbah he inherits, died in his father's lifetime, he cannot recover from mortgaged property, but only from unencumbered property, like all heirs.

10. It is also one of the stipulations of the kĕṯubbah that after the death of their father, the daughters are to receive their maintenance from his estate, until they are espoused or come of age.

Once a daughter comes of age, even if she is not espoused, or is espoused before coming of age, she is no longer entitled to maintenance.

In the case of a daughter who receives her maintenance from her father's estate after his death, her earnings and anything she may find belong to her, and not to the brothers.

11. The daughter is entitled to fixed maintenance, garments, and dwelling out of her father's estate, in the same manner as the widow. Property may also be sold without public announcement, to provide the daughters with maintenance and clothing, just as is done to provide the widow with maintenance and clothing. The only difference is that in the case of the widow the allowance is fixed according to her own or her husband's status, while the daughters are allowed only as much as would suffice for them, and they are also not required to swear an oath.

12. The sons cannot inherit their mother's kĕṯubbah nor can the daughters receive their maintenance according to the aforementioned stipulations, until they produce the writ of kĕṯubbah. If there is no writ of kĕṯubbah, they are entitled to nothing, since their mother may have waived her right to her kĕṯubbah. If, however, the local custom is not to write a kĕṯubbah, they are entitled to everything called for in the stipulations of the kĕṯubbah.

13. If a man commands at the time of his death that one of the conditions of the kĕṯubbah is to be abrogated, by saying, for example, that his daughters are not to receive their maintenance out of his estate, or that his widow is not to draw her maintenance out of it, or that his sons are not to inherit their mother's kĕṯubbah, no attention need be paid to him.

If he gives all his possessions to others as a gift, the rule is as follows: Since the gift of a gravely ill person becomes effective only after death, as will be explained, it follows that the gift and the liability of the estate for the stipulations of the kĕṯubbah take effect simultaneously. Therefore his widow and his daughters receive their maintenance out of the estate, and his sons inherit

the kĕṯubbah of their mother in case she died during her husband's lifetime.

14. The daughter of a woman who had exercised her right of refusal is like any other daughter and is entitled to maintenance. On the other hand, the daughter of a yĕḇamah, of a forbidden relative of the second degree, of an espoused woman, or of a victim of rape is not entitled to maintenance after her father's death on the basis of this stipulation. While their father is living, however, he is liable for their maintenance, the rule being the same as that governing any other sons and daughters during the life of their father.

15. If a man espouses a girl maintained by her brothers, he is liable for her maintenance from the time of the espousal, because she is entitled to maintenance from her brothers only up to her espousal or until she comes of age. This girl, however, has not yet come of age and become responsible for her own maintenance, but is still either a minor or a maiden; and no man would wish to humiliate his spouse by causing her to go begging from door to door.

16. If the girl is married, but then exercises the right of refusal, or is divorced or widowed, or even if she is awaiting levirate marriage, once she has returned to her father's house and has not yet come of age, she is entitled to maintenance out of her father's estate until she comes of age or is again espoused.

17. If a man dies leaving both sons and daughters, the sons inherit all the property and must maintain their sisters until they come of age or are espoused.

When does this apply? When he leaves an estate sufficient to maintain both the sons and the daughters until the latter come of age. Such an estate is called "ample estate." If, however, the estate left by him is less than that, the maintenance of the daughters until they come of age is deducted first, and the residue is given to the sons. If the estate suffices only for the maintenance of the daughters, the daughters are maintained out of it

until they come of age or are espoused, and the sons can go begging.

18. When does this apply? When the father leaves real property. If he leaves only movables, then inasmuch as the Geonim have enacted that daughters may get their maintenance out of movables, the sons and the daughters together are entitled to maintenance out of this meager estate, because the enactment's purpose was to give the daughters the same rights as the sons as far as movables are concerned, and the Geonim also have so ruled.

19. If he leaves land, and the estate is ample but diminishes afterwards, the heirs retain their title to it.

If the estate is meager at the time of death but increases afterwards, the sons inherit it. Even if it does not increase, once the sons act in anticipation and sell the meager estate, their sale is valid.

20. If the estate is ample but there is a debt against it, or if the father had stipulated to his wife that he is to maintain her daughter, neither the debt nor the maintenance of his wife's daughter may reduce the estate. Therefore the sons inherit all of it, and must pay the creditor's claim, maintain their father's wife's daughter during the period of time fixed by him, and provide maintenance for their own sisters until they come of age or are espoused, and thus go out from under their care.

21. If a man leaves a widow and a daughter by her or by another wife, and the estate is insufficient to maintain both of them, the widow is entitled to maintenance and the daughter can go begging from door to door. I say also that the maintenance of the daughter has priority over the son's right to inherit his mother's kĕṯubbah, if the latter dies while his father is living, even though both come under the stipulations of the kĕṯubbah. The reason for this is deduced by argument *a fortiori:* If the son's right of inheritance, which is based on the Torah, must yield to the maintenance of the daughter, should not the right to inherit

the kĕṯubbah, which is only a condition imposed by the court, yield to the maintenance of the daughter?

22. If a man dies leaving only daughters, both adult and minor, and no son, it cannot be said, "Let the little ones be maintained until they come of age, and then let them all divide the residue equally"; rather they all must divide the estate equally right now.

CHAPTER XX

1. The Sages have ordained that a man should give to his daughter something out of his property to be married therewith. This is what is termed "livelihood" (*parnasah*).

If a man gives his daughter in marriage without specifying her livelihood, he should give her no less than the clothing that is assigned to the wife of a poor man in Israel, as we have explained.

When does this apply? When the father himself is a poor man. If he is wealthy, it is proper that he should give her a livelihood according to his wealth.

2. If the father explicitly specifies to the husband that she is to have nothing, and that he must take her to wife stripped of everything, she has no claim upon her father. Moreover, the husband may not say, "When she enters my house, I will clothe her"; rather, he must clothe her while she is still in her father's house.

3. If a father dies leaving a daughter, an estimate should be made of his intention as to the amount he planned to give her for her livelihood, and the same amount should be given to her. And whence should the estimate of his intention be drawn? From his friends and acquaintances, his business transactions, and his dignity.

Similarly, if he had already in his lifetime given another daughter in marriage, the estimate should accord with that daughter's livelihood.

If the court has no way to estimate his intention, the daughter should be given one-tenth of his estate for her livelihood.

4. If he has left several daughters, the first daughter to be married is given one-tenth of the estate; the one after her, one-tenth of the residue left after the first; the third, one-tenth of the residue left after the second, and so forth. If they are all married simultaneously, the first takes one-tenth of the estate; the second, one-tenth of what is left after the first; the third, one-tenth of what is left after the second, and so on, even if there are ten of them. Thereupon they must divide the sum of these tenths equally. The remainder of the estate goes to the brothers.

5. This one-tenth which goes for the daughter's livelihood is not part of the stipulations of the kĕṯubbah. She may therefore collect it only out of real estate, even according to the enactment of the later Sages.

She may collect this one-tenth also out of the rental of this real estate. And if the brothers are willing to pay her money in lieu of the one-tenth of the real estate, they may do so.

6. In regard to this one-tenth, the daughter is the same as a creditor against the brothers. She may therefore collect it out of land of medium quality, and without an oath. If the brothers are dead, she may collect it from their children, out of land of inferior quality, and must swear an oath. For she is in such a case about to be paid out of the estate of orphans, and the rule is that he who demands payment out of the estate of orphans is paid only out of land of inferior quality, and must swear an oath, as shall be explained in the Laws Concerning Loans.

7. If the brothers had sold or pledged their father's real estate, the daughter may seize it from the purchasers for her livelihood, just as all creditors may do, as will be explained in the Laws Concerning Loans.

8. If a man who had given his adult daughters in marriage, so that only his minor daughters remain unmarried, dies without leaving a son, the rule is not to deduct first the livelihoods of the

minor daughters and then divide the residual estate, but rather to divide the entire estate equally between them.

9. If a man dies leaving two daughters and a son, and the first daughter acts in anticipation and takes one-tenth of the estate, while the second daughter fails to collect her own one-tenth until the son dies and the residual estate reverts to the two daughters, the second daughter is not entitled to her one-tenth; rather, they divide the residue equally, the first daughter retaining her own one-tenth.

10. If a man commands at the time of his death, "Do not provide my daughters with livelihoods out of my estate," his command must be honored, because this is not one of the stipulations of the kĕṯubbah.

11. We have already explained that if a man dies leaving a widow and a daughter, the maintenance of the widow has priority over the maintenance of the daughter.

Similarly, if the daughter is married, she may not take one-tenth of the estate, on account of the widow's maintenance. Even if the daughter dies after her marriage, her husband does not inherit the livelihood to which she would have been entitled, because the entire estate is presumed to be liable for the maintenance of the widow.

12. If an orphaned minor girl had been given in marriage by her mother or brother, with her consent, and had been provided by them with one hundred or fifty zuz, she may, upon coming of age, recover from them the livelihood that is proper for her, that is, either the approximate amount intended by her father or one-tenth of the real estate. This applies even if the brothers do not maintain her, and even if she had not protested at the time of the marriage, because a minor is deemed incapable of lodging a protest.

13. If the daughter is married after reaching adulthood, whether she is a maiden or has come of age, and does not claim her livelihood, she forfeits it. If, however, she lodges a protest

at the time of her marriage, she may recover a suitable livelihood whenever she wishes to do so. If she comes of age while still in her father's house, whether she does so after his death or before it, the rule is as follows: If when her brothers ceased to provide her with maintenance—since she is not entitled to it, as we have explained—she remained silent and did not demand her livelihood, she forfeits it. If she did protest, she does not forfeit it.

If the brothers did not cut off her maintenance and continued to maintain her after she had come of age, she does not, even though she did not protest, forfeit her livelihood as long as they continue to maintain her, because she may plead that they are still maintaining her, even though they are not obligated to do so, and she is not yet married, and that is why she had not demanded her livelihood.

14. If a man commands that his daughter be given a certain sum of money for her livelihood, to buy land therewith, whether he does so while gravely ill or while in perfect health, and then dies, the money being in the hand of a trustee; and if the daughter then says, "Give it to my husband, and let him do with it whatever he wishes," the rule is as follows: If she is already an adult and married, she may do so; but if she is only espoused, the trustee must do what he was commanded to do. If she is still a minor, even if already married, no attention need be paid to her; rather the trustee must do what the father had commanded him to do.

CHAPTER XXI

1. Anything a woman may find and her handiwork belong to her husband. And what is she required to do for him? It all depends on the custom of the country. Where the custom is for wives to weave, she must weave; to embroider, she must embroider; to spin wool or flax, she must spin. If it is not the custom of the women of that town to do all these kinds of work, he

cannot compel her to do any of them, except spinning wool only —because flax injures the mouth and the lips—for spinning is a kind of work that is characteristic of women, as it is said, *And all women that were wise-hearted did spin with their hands* (Exod. 35:25).

2. If she exerts herself to perform more work than is proper for her, the surplus belongs to the husband.

If he has a great deal of money, and even if she herself has many maidservants, she should not sit idle, without work, because idleness leads to immorality. She should not, however, be compelled to work all day long, but may reduce her work in proportion to their wealth.

3. If a man makes his wife vow to do no work at all, he must divorce her and pay her her kĕṯubbah, because idleness leads to immorality.

Every wife must likewise wash her husband's face, hands, and feet, pour his cup for him, spread his couch, and wait on him, for example, by handing him water or a vessel, or removing these from before him, and the like. She is not obligated, however, to wait on his father or his son.

4. The aforementioned kinds of work she herself must perform personally. Even if she has many maidservants, these kinds of work may be performed for the husband only by his wife.

5. There are other kinds of work that a wife must perform for her husband when they are poor. These are the following: She must bake bread in the oven—Ezra ordained that a wife should rise early to do her baking, so that bread might be available for the poor—cook food, wash clothes, nurse her child, put fodder before her husband's mount—but not before his cattle—and attend to the grinding of corn. How should she attend to the grinding? By sitting at the flour mill and watching the flour, not by doing the grinding herself; or by driving the beast, so that the mill would not stand idle. If, however, the local cus-

tom is for the wives to do their grinding with a hand mill, she must do the grinding herself.

6. When does this apply? When they are poor. If, however, she has brought him a maidservant, or property sufficient to purchase one maidservant therewith; or if he himself has a maidservant, or enough money to purchase one maidservant, she need neither attend to the grinding, nor bake, nor launder, nor give fodder to his mount.

If she has brought him two maidservants, or property sufficient to purchase two maidservants; or if he himself has two maidservants, or the means to purchase them, she also need not cook, nor nurse her child, but may give it to a maidservant to nurse.

7. It follows thus that there are five kinds of work that any wife must perform for her husband: she must spin, wash his face, hands, and feet, pour his cup, spread his couch, and wait on him.

And there are also six kinds of work that some wives must, and some need not, perform: attend to the grinding, cook, bake, launder, nurse, and give fodder to his mount.

8. All the kinds of work that a wife is required to perform for her husband, she may perform also while she is menstruating, except pouring his cup, spreading his couch, and washing his face, hands, and feet; this is a precaution, lest these services should cause erotic thoughts and lead him to sexual intercourse.

Therefore, during her menses, she should spread his couch when he is not present; and after pouring his cup, she should not hand it to him in her usual manner, but should set it down on the ground, or on a vessel, or on the table, and he should then take it therefrom.

9. If a wife breaks some utensils while doing her work in the house, she is exempt, not by rule but by enactment to that effect. For should you say otherwise, there would never be peace in the house, since as a result she would become so cautious as to refrain from most kinds of work, with consequent quarreling between the couple.

10. A wife who refuses to perform any kind of work that she is obligated to do, may be compelled to perform it, even by scourging her with a rod.

If the husband claims that she is not doing the work, while she claims that she has not refused to work, another woman or some neighbors should be asked to stay with them. This matter should be handled according to what the judge may consider feasible.

11. As long as the wife is nursing her child, the amount of her work should be reduced, while her maintenance should be augmented with wine and other things that are beneficial for lactation.

If having been granted the maintenance due her, she develops a desire for more food, or for other kinds of food, due to an abnormal craving in her belly, she may eat all that she desires at her own expense; and the husband may not hinder her by claiming that if she eats too much or eats injurious food, the child will die; for the suffering of her own body has priority.

12. If she gives birth to twins, she may not be compelled to nurse both of them; rather she should nurse one of them, and the husband should hire a wet nurse for the other.

If the wife is willing to nurse the child of her female friend together with her own, the husband may prevent her from doing so and allow her to nurse his child only.

13. If she vows not to nurse her child, the husband may compel her to nurse it until it is twenty-four months old, regardless of whether it is a boy or a girl.

If she says, "I will nurse my child," while he does not wish his wife to nurse, because nursing may make her unattractive, her own wish must be honored, even if she has several maidservants, because it is painful for her to be separated from her child.

14. If she is poor and consequently obligated to nurse her child, while he is affluent enough to free his wife from nursing, and if

she is unwilling to nurse, he must, even if he has no maidservants, hire a wet nurse or purchase a maidservant, because a woman can only rise in status with her husband and not descend.

15. If she says, "He can afford to hire or buy a maidservant," while he says he cannot, the burden of proof is upon her, and there is no room here for an oath.

16. A divorcée may not be compelled to nurse her child, but if she is willing to do so, her ex-husband may pay her her fee and she may then nurse it. If she is not willing to nurse the child, she may hand it over to him and he himself must attend to its needs.

When does this apply? When she had not nursed the child before it grew old enough to recognize her. If the child already recognizes her, even if it is blind, it may not be separated from its mother, on account of the possible danger to its life. Rather she should be compelled to nurse it for a fee, until it is twenty-four months old.

17. A divorcée is not entitled to maintenance, even if she nurses her child. Her husband, however, must give her, in addition to her fee, such things as the child may need, in the way of clothing, food, beverage, ointment, and the like. A pregnant woman, however, has no claim to anything.

If the months of nursing are completed and the child is weaned, the rule is as follows: If the divorcée is willing to keep the child with her, it should not be separated from her until it is fully six years old, and the father should be compelled to provide maintenance for the child while it remains with its mother.

After the six years, the father may say, "If he will be with me, I will provide him with maintenance; but if he remains with his mother, I will provide no maintenance for him." A daughter, however, must remain permanently with her mother, even after she is six years old.

18. How so? If the father can afford to dispense charity, an appropriate amount should be forcibly seized from him to maintain

his daughter therewith, while she remains with her mother. Even if the mother remarries, the daughter may remain with her, and the father is required to maintain her as a matter of charity until his death. After his death she receives her maintenance out of the estate, while she remains with her mother, in accordance with the stipulations of the kĕṯubbah.

If the mother is unwilling to have her children, whether male or female, remain with her after she had weaned them, she may affirm her refusal and either turn them over to their father or, if they have no father, cast them upon the community, and the community must attend to their needs.

CHAPTER XXII

1. The husband has prior claim over everyone else to his wife's estate. When does he acquire the right to her estate? When she leaves her father's authority, even if she has not yet entered the bridal chamber; once she has come under her husband's authority, he becomes her heir.

2. How so? If a woman is espoused, and her father delivers her to her husband or to her husband's agents, or if her father's agents deliver her to her husband or to his agents; and if thereupon she dies on the way before entering the bridal chamber, her husband becomes her heir, even if her kĕṯubbah is still in her father's house.

Similarly, if the father or his agents go with the husband, and on the way the husband enters a courtyard with her, and there secludes himself with her for the purpose of matrimony; and if thereupon she dies, the husband becomes her heir.

If, however, the father is still with the husband while escorting her to her husband's house, or if the father's agents go with the husband's agents or with the husband; and if thereupon she dies, her father is her heir, even if the husband had entered a courtyard with her in order to stay overnight in the same inn, in the

manner of all wayfarers, and even if her kĕṯubbah is already in her husband's house, inasmuch as her father or his agents were still with her, and her husband had not yet secluded himself with her for the purpose of matrimony.

3. Similarly, if having come of age, or been orphaned, or widowed, she goes alone from her father's house to her husband's house, with neither her husband nor his agents escorting her, and dies on the way, the husband does not become her heir.

4. If a man marries a woman who is forbidden to him, and thereupon she dies while under him, he is her heir, inasmuch as the betrothal was effective.

Similarly, if a man marries a female minor, and if thereupon she dies while under him, he is her heir, even though such a betrothal is not completely valid.

If, however, a normal man marries a female deaf-mute, he is not her heir if she dies. On the other hand, if a male deaf-mute marries a normal woman, and she dies, he is her heir, inasmuch as she was of sound mind and married him with her consent, thus giving him title to her money.

5. If a female minor is betrothed with her father's consent, but is then married without it, whether in his presence or not, the father may protest, as we have explained. If she dies, the husband is not her heir, even if the father had remained silent at the marriage, unless he has explicitly signified his consent thereto.

6. The Geonim have taught that if a woman falls ill and requests her husband to divorce her, so that she might leave without payment of her kĕṯubbah, in order that he should no longer be her heir, no attention need be paid to her. Even if she says, "I hate him, and I do not wish to stay with him," no attention need be paid to her, nor should she be treated as a rebellious wife. This is a wise rule.

7. The husband is entitled to usufruct of all of his wife's property during her lifetime, whether it is iron sheep property or

mĕlog̃ property. If she dies during her husband's lifetime, he inherits everything.

Therefore, if the wife has sold mĕlog̃ property after the marriage, the husband may, as long as she is living, recover the income therefrom from the purchasers, even if this property had come into her possession prior to her espousal. He may not, however, recover the land itself, because he has no claim to the body of the mĕlog̃ property until she dies.

If she dies during his lifetime, he may recover also the land itself from the purchasers without payment.

If the very same moneys that the wife had received from the purchasers are still on hand, he must return them to the purchasers, and he may not claim, "Perchance these are found moneys."

8. To what property does this apply? To property known to the husband. If, however, she had come into possession of property in another country, without his knowledge, and had sold it, her sale is valid.

Thus also, if an espoused woman sells property before her marriage, her sale is valid, because the husband has no right whatsoever to his spouse's property until he consummates the marriage.

9. If a woman, before her marriage, assigns all her property in writing to another person, whether a relative or a stranger, the husband is not entitled to the income therefrom, even though in case of divorce or widowhood the gift would become null and void, as will be explained in the Laws Concerning Gifts.

If she dies during her husband's lifetime, he does not inherit this property, since she had given it away before marriage, and therefore, if she dies while her husband is living, the donee acquires full possession of this gift.

Moreover, even if she gives away part or all of her property before her marriage, but writes for the recipient, "You are to acquire title to this as of today, provided that I confirm the gift at some future date," in which case the donee does not acquire full title until she confirms it, the husband is likewise not entitled to the

income therefrom, and if she dies, he does not inherit the property.

10. A widow awaiting levirate marriage may sell and give away such property as has fallen to her while she is awaiting, and the levir is not entitled to the income, even from iron sheep property brought by her to his deceased brother, until he consummates his marriage with her.

If she dies while awaiting levirate marriage, her heirs on her father's side inherit her mĕlōg̱ property and one half of her iron sheep property. The husband's heirs inherit her kĕṯubbah and the other half of the iron sheep property. The husband's heirs are also obligated to take care of her burial.

11. The kĕṯubbah of a widow awaiting levirate marriage constitutes a claim against all of her husband's property. Therefore the levir may not sell anything of his brother's estate, either before or after the levirate marriage. If he does sell, or give away, or divide with his brothers anything of the deceased's estate, before or after the levirate marriage, his act is invalid, because this property has already become liable to the widow for the payment of her kĕṯubbah therefrom.

12. If the levir consummates his marriage with his brother's widow, and if the late brother had left produce still attached to the ground, this produce should be sold and the proceeds used to purchase land, the usufruct whereof is thereupon the levir's.

13. If the deceased has left produce detached from the ground, and similarly, if he has left money and movables, they all belong to the levir. He may use these as he pleases, and she has no right to hinder him, inasmuch as the liability of movables for the kĕṯubbah, which is based only on a Gaonic enactment, does not have sufficient force to deny the levir his brother's possessions and to make them forbidden to him, to the extent that he might not transact business with them because of this liability.

14. If the yĕḇamah has no kĕṯubbah, or has waived her right to it, the levir acquires title to the estate of his late brother, and may

sell or give it away as he pleases. When he consummates the marriage with her, he must write for her his own kĕṯubbah for one hundred zuz, and all of his property will henceforth be liable for this kĕṯubbah, by the same rule as applies to all wives who have a kĕṯubbah.

15. If a woman, after her marriage, sells or gives away some of her iron sheep property, whether to her husband or to others, her act is invalid.

Thus also, if the husband sells land forming part of his wife's property, whether it is iron sheep property or mĕlōg property, his act is invalid.

16. If the husband sells movables out of his wife's iron sheep property, his sale is valid, even though he is not permitted to do so. If both of them sell mĕlōg property, the sale is valid, whether the purchaser buys it first from the husband and then again from the wife, or first from the wife and then again from the husband.

17. Thus also, if a woman sells or gives mĕlōg property to her husband, her sale or gift is valid, and she may not claim in the case of mĕlōg property, "I did it only to please my husband." In the case of other kinds of property, however, she may make such a claim.

18. How so? If a woman sells or gives some of her iron sheep property to her husband—whether it is real estate, or movables, or a field assigned by him to her for her kĕṯubbah, or a field designated in the kĕṯubbah as hers, or a field of his own whose assessed value he had assigned to her—he does not acquire title to it. Even if the sale was voluntarily validated by the woman with a formal act of barter, she may retract it any time she pleases, because she made the gift or the sale only in order to keep peace in her home. The husband therefore has no recourse at all to any proof as to his wife's property, except in the case of mĕlōg property, as we have explained.

19. In the case of iron sheep property lost or stolen, if the wife has waived her right to it in favor of her husband, and if this

waiver has been ratified in the presence of witnesses by a symbolic act of barter, it would seem to me that she may not say, "I did it only in order to please my husband." To what can this be compared? To the wife who declares that she is not entitled to the liability for iron sheep property because she has changed it into mĕlog̃ property, and confirms this declaration by a symbolic act of barter. In this case the husband need not bring evidence in order to recover anything, nor in order to retain any property, but only in order to be exempt from her demand for payment.

If, however, she gives him extant movables out of iron sheep property, he does not acquire title to them, because she can claim, "I did it only to please my husband."

20. If the husband sells the usufruct of his wife's land, his act is invalid, because the purpose of the enactment granting him the usufruct of his wife's land is to provide additional means for household expenses. Therefore, if he sells the usufruct and uses the money in trade, his act must be honored.

21. If the wife has cash monies, the rule is as follows: If they are iron sheep property, the husband may use them in trade; if they are mĕlog̃ property—whether brought by her to him, or inherited by her, or given to her—or if she has inherited or was given movables, they should be used, or in the case of movables, they should be sold and their proceeds used, to purchase land, the usufruct of which will be the husband's.

22. Similarly, in the case of a woman injured by other persons, all compensation money due her should be used to purchase land, with the husband enjoying the usufruct thereof, as will be explained in the Laws Concerning Damaging.

23. If she comes into possession of slaves, they should not be sold, even if they had reached old age, out of consideration for the good name of her father's house.

If she comes into possession of olive trees and grapevines, but without any ownership rights to the land itself in which these trees are rooted, the rule is as follows: If they bring in enough to

cover the cost of their care, they should not be sold, out of consideration for the good name of her father's house; if not, they should be sold for timber and the proceeds used to purchase land, the husband enjoying usufruct thereof.

24. If she comes into possession of produce that is still attached to the ground, it belongs to the husband. If the produce is detached from the ground, it belongs to her and should be sold, and the proceeds used to purchase land, the husband enjoying usufruct thereof.

If, however, a man divorces his wife, and at the time of the divorce she owns produce that is still attached to the ground, it belongs to her. If the produce is detached from the ground, it belongs to him.

25. The husband is liable for the maintenance and complete care of slaves and cattle forming part of mĕlog̃ property. These must work for him, and he enjoys what they produce. Therefore the child of a mĕlog̃ bondswoman belongs to the husband, and so does the offspring of mĕlog̃ cattle. If he divorces his wife, and she is willing to pay for the bondswoman's child in order to keep it, out of consideration for the good name of her father's house, her wish must be honored.

26. If she has brought him two utensils or two maidservants as iron sheep property assessed at one thousand zuz, and they have risen in value to two thousand zuz, and if he then divorces her, she may take one of them in lieu of her original one thousand zuz. As for the other, if she is willing to pay for it out of consideration for the good name of her father's house, her wish must be honored.

27. If a man makes a gift to his wife—whether he gives her land or money with which she purchases land—the husband is entitled to no usufruct of this gift.

Similarly, if a third person makes a gift to a woman with the understanding that her husband is to have no right of usufruct thereof, and that she herself is to use the income from it as

she pleases, the husband is entitled to no usufruct of this gift. Thus also, if the woman sells her kĕṯubbah for goodwill benefit, the money realized belongs to her, and the husband has no usufruct of it.

28. If the offspring of a mĕlōḡ beast is stolen, and the thief is found and made to pay double, the excess belongs to the woman, because it does not constitute usufruct in the sense in which the enactment of the Sages has entitled the husband thereto.

If a third person injures his wife, all compensation due for damage, pain, and humiliation belongs to her, and the husband has no usufruct thereof, as shall be explained in the Laws Concerning Damaging.

29. If a man sells land to his wife, the rule is as follows: If the husband had been aware of the money with which she purchased the land from him, and had known about it, she acquires title to the land, and the husband has the usufruct thereof. If the money was kept secret, she does not acquire title, because the husband may say, "I sold it merely in order to bring into the open the money that she was hiding." The money thus revealed should be used to purchase land, and the husband will have usufruct thereof.

30. If money or movables are found in the wife's possession, and if she says, "They were given to me as a gift," while the husband says, "They are the proceeds of your handiwork, and are therefore mine," it is she who is to be believed; he may, however, pronounce a ban upon any woman who claims something that is not true. Land should then be purchased with this money, and he will have usufruct thereof.

If she says, "They were given to me with the understanding that my husband is to have no control over them, and that I am to do with them as I please," the burden of proof is upon her, because all money found in the wife's possession is presumed to be subject to her husband's right of usufruct, until she brings proof to the contrary.

31. If she says to him, "You gave it to me as a gift," she must swear an informal oath that the husband had indeed given it to her, and the husband is then not entitled to usufruct.

32. No bailments may be accepted from women, slaves, or minors. If one transgresses and accepts a bailment from a woman, he must return it to her, and if she dies, he must return it to her husband. If one accepts it from a slave, he must return it to him, and if he dies, he must return it to his master. If one accepts it from a minor, he should purchase therewith a Scroll of the Torah for him, or an article he can enjoy.

For any one of these persons, if he declares at the time of his death, "This bailment belongs to So-and-so," the rule is as follows: If the bailee holding this bailment presumes him to have been a trustworthy person, he should do as the bailor has commanded; if not, he should return the bailment to the bailor's heirs.

33. If the wife has monies subject to the husband's right of usufruct, and if he says, "This and this object should be purchased with them," while she says, "I will purchase only that and that object," such property should be purchased as would produce most income and require least upkeep, whether it is what he wanted or what she wanted. The property purchased should be something the trunk of which constantly produces new shoots, lest he should use up all of it, thus causing the loss of the principal as well.

34. If a woman brings to her husband a goat for milking, a ewe for shearing, or a date tree for its fruit, he may continue to enjoy their yield until the principal is exhausted, even though she owns only the yield of these.

Similarly, if she brings him furnishings as mĕlōg̃ property, he may make use of them for clothing, bed spread, or bed cover, until the principal is exhausted. If he divorces her, he is not liable for the wear and tear of such mĕlōg̃ property.

35. The Geonim have taught that in the case of iron sheep property, even though the husband is liable for its depreciation, nevertheless, if the articles, though worn out, are still extant and are still capable of performing a function similar to their original one, the wife must accept them as they are. If they are no longer capable of functioning in any way similar to their original manner, they have the same status as articles that have been stolen or lost, for which the husband is obligated to pay their value as assessed at the time of the marriage.

This is a widespread custom, and whosoever marries takes upon himself the liability for the dowry in accordance with this custom. And just as he is not obligated, according to this custom, to pay compensation for depreciation, so is he not entitled to the appreciation, if the dowry rises in value.

The husband may compel some of his wife's slaves and bondswomen to serve him in the house of another wife whom he had married, whether they constitute mĕlog̃ property or iron sheep property; he may not, however, take them to another city without his wife's consent.

CHAPTER XXIII

1. If a woman stipulates that her husband is to waive one of the rights to which he is normally entitled, the rule is as follows: If he yields this right in writing while she is still espoused, before the wedding, he need not ratify it with a symbolic act of barter; rather, all that he has written for her is valid. If he writes it after the wedding, he must perform a symbolic act of barter to ratify it.

2. If he stipulates to her that he will lay no claim to her property, the rule is as follows: If she sells or gives away any of it, her sale or gift is valid, but he is entitled to usufruct thereof as long as it is under her control. If he had ratified the waiver by a symbolic act of barter while she was espoused to him, to the effect

that he will lay no claim to her property, he has thereby removed himself from the body of her land, and is therefore entitled to no usufruct of her property forever.

Even if he contests his act of barter and says, "It never entered my mind that by this symbolic act of barter I would be deprived of the usufruct; my intention was merely to concede that if she made a sale, it was to be valid, for no man would marry a woman without any property," no attention need be paid to him; rather, he has already removed himself from the body of the land involved.

3. If he stipulates to her that he is not to enjoy the usufruct of her property, he may not enjoy it, but the produce involved should be sold, and the proceeds used to purchase another parcel of land, of which he will have the usufruct, because he has removed himself from the usufruct of that particular piece of property only.

4. If he stipulates to her that he is to waive his right to the yield of her property, and also to the yield of the yield, the yield of the original parcel of land should be used to purchase a second parcel, and the yield of the second parcel should be used to purchase a third parcel; he will then be entitled to the usufruct of this third parcel, since it represents the yield of the yield of the original yield.

The same procedure may be extended further, until such time as he may stipulate to her that he is to waive his right both to the primary yield and to all the secondary yields, ad infinitum. In the latter case he is entitled to no usufruct whatsoever during her lifetime. If she dies, however, he inherits everything.

5. If he stipulates to her that he is not to be her heir, he has no right to her estate, but is entitled to the usufruct thereof during her lifetime. The same applies if he stipulates to her that he is to inherit only part of the estate; and similarly, if he stipulates to her that if she should die childless, the estate is to revert to her father's house—all these stipulations are valid.

6. When does this apply? When he makes the stipulation to her before she is married, inasmuch as in the case of an estate that comes to a person from outside his own family, he may waive his right to it only before he becomes entitled to it. If he makes this stipulation after she is married, it is null and void, and he remains her heir, as we have explained.

7. If he stipulates to her after the marriage that he is to lay no claim to her property, nor to the yield of its yield, ad infinitum, both during her lifetime and after her death, he has no right of usufruct whatsoever. If she dies, however, he is her heir, as we have explained.

8. If the husband incurs some expense in connection with mĕloḡ property, whether his expense was small and the usufruct he enjoyed large, or whether the expense was large and the yield he enjoyed small, even if it was only one dried fig consumed by him in a dignified manner, or only one denar's worth consumed by him in a hasty fashion, or even if he bought with the yield of what he had spent no more than one bundle of vine shoots—what he has spent is spent, and what he has enjoyed he has enjoyed.

9. Similarly, if she comes into monies located in a distant place, and he incurs some expenditure in bringing them over, or in recovering them from the person with whom they were deposited; and if he then purchases land with these monies and enjoys the yield thereof up to the aforementioned minimum amount, what he has spent is spent, and what he has enjoyed he has enjoyed.

If he incurs the expenditure but enjoys no yield, or enjoys less than the aforementioned minimum amount, an estimate should be made of the property's appreciation, and he should be asked how much he had spent. If the appreciation exceeds the expense, he must swear an oath, while holding a sacred object, as to how much he had spent, and may then be reimbursed for the amount spent. If the expenditure exceeds the appreciation, he is entitled only to the amount of the appreciation, and must swear an oath.

10. When does this apply? When he divorces his wife. If she is guilty of rebellion against her husband, and even if the yield enjoyed by him is large, an estimate should be made of it, and the amount deducted from the reimbursement due him for the expenses incurred; he may then receive the balance, after swearing an oath. For a man does not add to his wife's possessions with the intent that she should then take them and leave on her own.

Similarly, if a man incurs some expenditure in connection with the property of his wife who is a minor, and she thereupon exercises her right of refusal, an estimate should be made of the yield enjoyed by him, of his expenses, and of the property's appreciation, and these amounts counted against his share had he been a tenant, inasmuch as he has acted with her permission.

11. There are many customs regarding the dowry. In some places the custom is to increase the amount of the dowry, as specified in the kĕṯubbah, by one third, one fifth, or one half above its actual value. For example, if the dowry is one hundred zuz, the kĕṯubbah states that the wife brought in one hundred and fifty, in order to make it appear larger to the public; when she comes to collect it, however, she would collect only the one hundred.

In some places the custom is to reduce the amount, so that if she agrees to bring to the husband utensils worth one hundred zuz, she actually gives him utensils worth one hundred and twenty or one hundred and fifty, although the kĕṯubbah states that she brought him only one hundred zuz worth.

In some places the custom is to state the true amount, mina for mina.

In other places the custom is for the groom to give the bride a sum equivalent to the value of the dowry, wherewith she might adorn herself and buy fragrant spices, or the like.

In still other places the groom adds to the bride's dowry some assessable articles of his own, in order to boast about it.

12. The man who marries without precise specification of the dowry in the kĕṯubbah must write and repay according to the custom of the particular country. Similarly, the bride who agrees to bring in a dowry must follow the local custom, and when she comes to collect her kĕṯubbah, she is paid what is in her kĕṯubbah, the payment following the same local custom.

In all these and similar matters, the local custom is the basic principle that governs the rule, provided that this custom prevails all over the particular country.

13. If a man and a woman are negotiating with a view to matrimony, he saying to her, "How much will you bring me?", to which she replies, "So-and-so much. And how much will you give me," or "write for me?", to which he replies, "So-and-so much"; and similarly, if the two fathers are negotiating in behalf of the son and the daughter, respectively, the one asking, "How much are you giving in behalf of your son?", and the other replying, "So-and-so much. And how much are you giving in behalf of your daughter?", "So-and-so much"—once the two parties perform the betrothal, each is entitled to the property stipulated in the negotiation, even if no symbolic act of barter had taken place between them. Title to such objects is thus acquired by verbal declaration only.

14. When does this apply? When it is the father who comes to an agreement in behalf of his daughter, whether she is a minor or has come of age, or in behalf of his son, and at their first marriage. For a man feels close to his child, and therefore, because of his great joy at his child's first marriage, a verbal declaration is sufficient indication that the transaction is complete and ratified.

If, however, it is a brother who agrees in behalf of his sister, or a mother who agrees in behalf of her daughter, or any other relative, and similarly if the father agrees in behalf of his son or his daughter at their second marriage, the verbal declaration alone does not suffice, until it is ratified by a symbolic act of barter on the part of him who agrees to pay such-and-such a sum.

15. If a father makes such an agreement in behalf of his daughter, she does not acquire title to this gift until her husband has consummated the marriage, nor does his son until he has consummated the marriage, because whosoever makes such an agreement does so only on the understanding that marriage is to ensue.

Therefore, if a man agrees to pay money to his son-in-law, and the latter dies before consummating the marriage, so that the bride becomes subject to levirate marriage with the son-in-law's brother, the father may say to the levir, "I agreed to pay the money to your brother, not to you." This holds true even if the first brother was a boor, while the second is a scholar, and even if the daughter is willing to marry the latter.

16. If the bride's father, having agreed to pay money to his son-in-law, departs to another country, the daughter may say to her husband, "I made no agreement in my own behalf—what can I do? Either consummate the marriage without a dowry or release me with a get."

If, however, it is she who made the agreement in her own behalf, but now finds that she is unable to fulfill it, she must tarry until she can afford what she had promised, or until she dies. Why may she not release herself by way of rebellion? Because in the case of a woman who is rebellious while yet espoused, it is the husband who wishes to consummate the marriage with her, while she does not; here, however, it is the husband who does not want her until she gives him the dowry that she had agreed to supply, while she wants him, since she says to him, "Consummate the marriage or release me."

To whom does this apply? To an adult woman. In the case of a minor female, however, who has made an agreement in her own behalf, the groom should be compelled to give her a get, or else to consummate the marriage without a dowry.

17. If a man marries a woman who stipulates to him that he is to maintain her daughter for such-and-such a number of years, he is obligated to supply maintenance for her for the number of

years agreed upon by him, provided that they have made this stipulation at the time of the betrothal. If it was not made at the time of the betrothal, he is bound only if he has ratified it by a symbolic act of barter, or has set it down in a deed, or has confirmed it in some similar manner, as will be explained in the Laws Concerning Buying and Selling.

If the wife is divorced within the period of years that he had obligated himself to maintain her daughter, and if the wife then marries another man, and makes a similar agreement with him that he is to maintain her daughter for such-and-such a number of years, the first husband may not say, "If she will come to my house, I will maintain her"; rather, he must convey her maintenance to the place where her mother is residing. Nor may the two husbands say, "We will maintain her jointly"; rather, one must provide maintenance for her, while the other must pay her the monetary equivalent of her maintenance.

18. If this daughter marries within that period of time, her own husband is liable for her maintenance, and each of her mother's husbands must pay her the monetary equivalent of her maintenance.

If the stepfathers who had agreed to maintain her should die, the rule is as follows: If they had ratified the agreement by a symbolic act of barter, or bound themselves by a deed, she is in the position of a creditor holding a deed of indebtedness, and has the right to seize her maintenance out of property mortgaged thereto, until the termination of the period agreed upon. If the agreement was made at the time of the betrothal, and there was no symbolic act of barter, the matter is regarded as something that was not intended to be set down in writing, and she cannot therefore seize any property for her maintenance.

CHAPTER XXIV

1. If a man marries a barren woman and has no children by her, nor another wife by whom he might have children, then, not-

withstanding that he must be compelled to dismiss her, she has the same status as any other wife, and is entitled to her kĕṯubbah and to the additional stipulations attached to it. The husband too is entitled to the same rights as he would be entitled to with regard to any other wife of his.

2. If, however, a man marries a woman without being aware of any defect in her, and she is then found to be barren or forbidden to him by a negative commandment; or likewise, if he marries a woman of secondary degree of consanguinity, whether knowingly or unknowingly, she is entitled to neither the statutory kĕṯubbah nor to any of the stipulations additional thereto. She is, however, entitled to the supplementary amount. She is not entitled to maintenance, even after his death. And when they are forced to separate, she is not entitled to recover from the husband for the usufruct of her property.

3. Why are these women not entitled to the statutory kĕṯubbah, yet are entitled to the supplementary amount? Because the statutory kĕṯubbah was instituted by the Sages in order that the husband should not think lightly of dismissing his wife; since in this case he was not aware of her defect, she is not entitled to the statutory kĕṯubbah.

As for the supplementary amount, he himself has assumed an obligation for it so long as she is willing to stay with him, and she has in fact kept her part of the agreement and given him the benefit of her person, and is staying with him. It is the Torah that has forbidden her to him; what can she do about it? That is why she is entitled to the supplementary amount. It is not her own actions that are responsible for her becoming forbidden after the marriage; rather, she was forbidden to him before.

4. Why did the Sages, in the case of a woman of secondary degree of consanguinty, make no distinction between the husband who was aware of her defect and the one who was not aware of it, but rather ruled that she is not entitled to the statutory kĕṯubbah in all circumstances? Because she is forbidden to

him by Scribal law only, and for this reason they reinforced this prohibition.

If, however, he marries a woman forbidden to him by a negative commandment, and is aware of her defect, or if he marries a woman forbidden to him by a positive commandment, and is or is not aware of her defect, she is entitled to her kĕṯubbah. For in the case of a woman forbidden by a negative commandment, when he married her even though he was aware of her defect, he showed thereby his willingness to maintain her out of his property. As for a woman forbidden by a positive commandment, in her case the prohibition is a light one. Both of them are therefore entitled to maintenance after his death.

Similarly, if she borrows in order to provide for her maintenance, he is liable for repayment. And when he is compelled to dismiss her, she is entitled to recover from him for the usufruct of all of her property.

5. A girl who has exercised the right of refusal is not entitled to a kĕṯubbah, but is entitled to the supplementary amount, and she cannot recover from the husband for the usufruct of her property. If she borrows in order to maintain herself while she is under him, and then exercises the right of refusal, she cannot recover the cost of that maintenance from the husband.

6. A woman who has played the harlot while under her husband is not entitled to a kĕṯubbah, neither to the statutory nor to the supplementary amount, nor to any of the stipulations of the kĕṯubbah, because it is her own actions which have caused her to become forbidden to her husband.

7. What is the rule concerning these women in regard to their dowry? Any woman whose dowry is still in existence, may take what is hers and go her way, even if she had played the harlot. If she is a forbidden relative of the secondary degree, or one of those prohibited by a positive commandment, whether her husband was aware of it or not; or if she is barren or forbidden by a negative commandment, and he was aware of it, she has, as far as her dowry is concerned, the same status as any other wife.

In the case of iron sheep property, he is liable for it. In the case of mĕlog̱ property, whatever was stolen or lost, the loss is hers, and he is not liable for repayment.

8. If she is barren or forbidden by a negative commandment, and he was not aware of it, whatever was lost, or stolen, or worn out, or worn threadbare out of iron sheep property, need not be repaid by the husband, because she had given him permission to keep these with him.

As for whatever was lost or stolen out of mĕlog̱ property, he is liable for repayment, which is the reverse of the rule governing all other women; for inasmuch as there is no complete matrimony here, he did not acquire any rights to her mĕlog̱ property.

9. A girl who has exercised the right of refusal is not entitled to any worn-out things at all, because the husband is not liable for anything that was lost or stolen out of her property, either mĕlog̱ or iron sheep. She may take only what there is on hand of her own and go her way.

10. A woman who has played the harlot while under her husband is not entitled to her kĕṯubbah, neither to the statutory nor to the supplementary amount, and her husband is not liable for any loss or theft of her iron sheep property, let alone of mĕlog̱ property.

Not only a woman who has played the harlot, but also one who has transgressed the law of Moses or Jewish practice, or one who is dismissed because of her ill repute, has no kĕṯubbah, neither the statutory nor the supplementary amount nor any of the stipulations of the kĕṯubbah.

Each of these women may take what there is on hand of her dowry and go her way, and the husband is not liable for repayment of anything that he has caused to depreciate or has lost.

11. The following acts, if committed by a woman, render her guilty of transgressing the law of Moses: going out into the street with the hair of her head uncovered, making vows or swearing oaths and not fulfilling them, indulging in sexual intercourse during menstruation, failing to set aside her dough offering, or

serving her husband prohibited food, that is, not only such food as swarming and creeping creatures or carrion, but also untithed food.

How can this become known? If, for example, she says to her husband, "So-and-so, the priest, has regularized this produce for me," or "The woman So-and-so has set aside the offering from this dough in my behalf," or "So-and-so, the Sage, has declared to me that this stain is ritually clean," and if after he eats this food, or has intercourse with her, he inquires of So-and-so, and is told, "These things never did happen." The same is true if she is presumed by her neighbors to be menstruating, but tells her husband, "I am clean," and he then has intercourse with her.

12. And what constitutes Jewish practice? It is the custom of modesty as observed by the daughters of Israel, and the following acts, if indulged in by a woman, render her guilty of transgressing Jewish practice: going out into the street or into an open alley with head uncovered and without the veil worn by all women, even if her hair is covered with a kerchief; spinning in the street, with a rose or a similar ornament in front of her face, on her forehead, or on her cheeks, in the manner of brazen heathen women; spinning in the street, with her arms exposed to the public; frolicking with young men; demanding intercourse from her husband in a voice so loud that her neighbors can hear her discussing sexual matters; cursing her father-in-law in her husband's presence.

13. Ezra ordained that a woman should always wear drawers in her home for the sake of modesty. If she does not wear them, however, she is not transgressing the law of Moses, and therefore does not forfeit her kĕṯubbah.

Thus also, if she goes from courtyard to courtyard within the same alley with her hair uncovered, she does not transgress the law, so long as her hair is covered with a kerchief.

14. The woman who thus trangresses the law forfeits her kĕṯubbah only after due warning and on the testimony of wit-

nesses. If she trangresses while she and her husband are alone, and he knows that she is transgressing, and warns her, but without witnesses being present, and if she then transgresses again, he thereupon claiming, "She transgressed after due warning," and she claiming, "I did not transgress at all," or "He did not warn me," the rule is as follows: If he wishes to dismiss her, he must pay her the kĕṯubbah after she swears an oath that she did not transgress; for should she admit that she had transgressed after this warning, she would be entitled to nothing.

15. How is a woman to be dismissed on the ground of ill repute? For example, if witnesses testify that she has done something exceedingly unseemly, indicating that a trangression has been committed, even though there is no clear evidence of harlotry.

How so? If, for example, she is alone in the courtyard, and people seeing a spice-peddler come out, immediately at the moment of his exit enter and find her rising from the couch and putting on her trousers or tying her belt, or find moist saliva above the canopy; or if both of them come out of a dark place, or help one another to ascend from a pit, or the like; or if they see him kiss her at the opening of her chemise, or see them kiss or hug each other, or if the two of them enter a place one after the other and shut the doors, or act in a similar manner. In any case such as these, if the husband wishes to dismiss her, she may be dismissed without her kĕṯubbah, and no warning is required.

16. In the case of the woman who has transgressed the Mosaic law or deviated from Jewish practice, as well as the one who has done something unseemly, the husband may not be compelled to divorce her, and if he wishes to retain her, he may do so. But even if he does not dismiss her, she is not entitled to her kĕṯubbah. For the Sages have instituted the kĕṯubbah in order that the husband should not think lightly of dismissing his wife; but in this they were concerned only for the virtuous daughters of Israel. As for these dissolute ones, this safeguard is not for them; on the contrary, let the husband think lightly of dismissing such a one.

17. If a man sees his wife play the harlot, or if one of his or her relatives, in whom he places credence and reliance, tells him that she has played the harlot—whether the informant is a man or a woman—once his mind is firm in the belief that the information is true, he is obligated to dismiss her, and is forbidden to have intercourse with her; he must, however, pay her her kĕṯubbah.

If she admits to him that she had played the harlot, she must be dismissed without her kĕṯubbah. Therefore, if only he himself had witnessed her misconduct, he must make her swear an oath, while holding a sacred object, that she had not played the harlot while under him, and only then may she claim her kĕṯubbah. If, however, the witness is someone else, the husband cannot subject her to an oath, unless she is already subject to an oath for some other reason, in which case this matter may be added on to it also.

18. If a woman tells her husband that she has, while under him, played the harlot of her own free will, no attention need be paid to her statement, since she may have cast her eyes upon another man. She does, however, forfeit her kĕṯubbah, both the statutory and the supplementary amount, as well as her right to worn-out garments, seeing that she has admitted harlotry.

But if he believes her, and places reliance in her words, he is obligated to divorce her. The court, however, may not compel a man to divorce his wife for any of these causes, unless two witnesses come forth to testify that his wife has indeed played the harlot in their presence, and of her own free will. Only thereafter may they compel him to divorce her.

19. If a woman has, while under her husband, played the harlot unwittingly or under duress, she is permitted to him, as it is said, *neither she be seized* (Num. 5:13), implying that if she was seized, she is permitted, whether she was raped by a heathen or by an Israelite.

Any woman subjected to duress at the beginning of intercourse is permitted to her husband, even if she finally acquiesced in it,

and even if she said, "Leave him alone, for had he not overpowered me, I would have hired him to do it." For she has no more than succumbed to impulse, and at the outset she was indeed subjected to duress.

20. Women kidnapped by robbers are regarded the same as captive women subjected to duress, and are therefore permitted to their husbands. If the robbers had let them go unmolested, and they went along with them of their own volition, they are considered guilty of willful misconduct, and are therefore forbidden to their husbands.

The same rule applies to both the woman acting unwittingly and the one acting under duress, because an unwitting act has an element of duress in it.

21. When does this apply? When her husband is an Israelite. The wife of a priest, however, who has acted unwittingly or under duress, is forbidden to her husband, because in either case she has acquired the status of a harlot, and he is forbidden to a harlot, as will be explained in the Laws Concerning Forbidden Intercourse.

22. The wife of either an Israelite or a priest, if raped, retains her kĕṯubbah, the statutory as well as the supplementary amount, and does not forfeit any part of it. The priest, however, must be compelled to pay her her kĕṯubbah and divorce her.

23. If a priest's wife says to him, "I have been raped," or "I unwittingly had intercourse with another man," he must pay no attention to her statement, since she may have cast her eyes upon another man.

If he places credence in her, however, or if his informant is a person in whom he places reliance, he must dismiss her and pay her her kĕṯubbah.

24. If a man says to his wife in the presence of two witnesses, "Do not seclude yourself with So-and-so," and if she does seclude herself with that man before two witnesses and tarries long

enough to be defiled, she is forbidden to her husband until he causes her to drink the "water of bitterness," as will be explained in the Laws Concerning the Wayward Woman.

If he dies before he causes her to drink, she is not entitled to her kĕṯubbah, even though nothing unseemly has as yet been found, for there is nothing more unseemly than this.

At present, when there is no "water of the wayward woman," she becomes forbidden to him forever, and must be dismissed without her kĕṯubbah, either the statutory or the supplementary amount, inasmuch as it is her own evil deeds that have caused her to become forbidden.

25. If having said to her privately, "Do not seclude yourself with So-and-so," he then sees her secluding herself with that man long enough to be defiled, she is forbidden to him at present, when there is no "water of the wayward woman." He must, therefore, dismiss her and pay her her kĕṯubbah. If she admits that she had secluded herself subsequent to his warning, she must be dismissed without her kĕṯubbah. Consequently he must first make her swear an oath, and only then pay her her kĕṯubbah.

CHAPTER XXV

1. If a man marries a woman without stipulating any conditions, and she is found to be subject to vows, she may be dismissed without her kĕṯubbah, either the statutory or the supplementary amount.

What vows are meant here? Not to eat meat, or not to drink wine, or not to adorn herself with colored garments. The same applies to other ornamental objects with which it is the local custom for all women to adorn themselves. If, however, she is found to be subject to a vow other than these, she does not forfeit anything.

2. Thus also, if a man marries a woman without stipulating any conditions, and she is found to be afflicted with one of the female defects which we have already described, and if the hus-

band was unaware of this defect, nor did he hear of it, so that he might have accepted it, she may be dismissed without her kĕṯubbah, either the statutory or the supplementary amount.

How so? If there is a public bathhouse in the city, and if he has relatives, he cannot say, "I was not aware of these defects," even if these are hidden defects, because he is bound to investigate the matter through his female relatives, and the presumption is that he had heard of the defects and accepted them.

If there is no public bathhouse there, or if he has no relatives, he may put in a claim respecting concealed defects. Epilepsy recurring at definite times is classed as a concealed defect.

In case of obvious defects, however, he has no claim, inasmuch as everyone can see them and is bound to tell him. The presumption is, therefore, that he had heard of them and became reconciled to them.

Now it is obvious that this rule applies only to those places where it is the custom for women to walk about in the street with their faces uncovered, and where everybody knows them well enough to say, "This one is the daughter of So-and-so, and that one is the sister of So-and-so," as is the case in the cities of Edom at the present time.

In those places, however, where it is the custom for women not to go out in the street at all, and where a woman would go out to the public bathhouse only at night and disguised, so that no one can see her except her own female relatives, he may put in a claim respecting even obvious defects, provided that there is no public bathhouse there, and that he has no female relative to examine her.

If, however, there is a public bathhouse in that city, and it is the custom there for women not to go out with uncovered faces, he cannot protest if he has a female relative, inasmuch as everyone can see her naked in the bathhouse. If, however, it is their custom to go about disguised and to seek privacy even in the bathhouse, so that a woman would bathe only at night, or alone in a little compartment in the bathhouse, thus neither seen nor recognized, he may put in a claim respecting even obvious defects. These are matters of common sense, and not of Scriptural decree.

3. A few Geonim have taught that the statement of the Sages, "because he is bound to investigate the matter through his female relatives," refers not only to relatives but also to mere acquaintances. Even if he lives in a city where he has no relatives at all, so long as there is a public bathhouse there, he cannot protest, because it is impossible that he should have no friends, and he consequently could ask one of them to have his wife or sister examine So-and-so for him. The presumption therefore is that he had heard of the defect and became reconciled to it.

This rule, however, does not seem sound to me, because in such matters not every person would reveal all that is in his heart to anyone but his own relatives. Furthermore, he would not rely too much on anyone's advice but that of his relatives.

4. How is the claim respecting defects to be put in? If the defects found in her are such as were of a certainty in her prior to her espousal—for example, an extra finger, or the like—her father must show proof that the husband was aware of them and accepted them, or that the presumption is that he was aware of them. If he cannot bring such proof, she may be dismissed without anything at all of her kĕṯubbah.

If the defects are such as might have developed in her after her espousal, the rule is as follows: If they are discovered after her entrance into her husband's house, the husband must bring proof that she had them before the espousal, and that his acquisition of her was consequently based on a misapprehension. If the defects are discovered while she is still in her father's house, the father must prove that they had developed after the espousal, and that it is therefore the groom's misfortune.

5. If the husband brings proof that the defects were in her before the espousal, or that she herself had admitted this fact to him, while the father brings proof that the husband had seen them and remained silent, thus showing that he was reconciled to them, or that the presumption is that he was aware of them and was reconciled to them, the husband is liable for her kĕṯubbah.

6. If after having intercourse with his wife he tarries several days, and then claims that he did not notice this defect until now, no attention need be paid to him, even if the defect is in the folds of her skin or on the sole of her foot, because the presumption is that no man would drink out of a cup without first examining it thoroughly. It is therefore presumed that he was aware of the defect and accepted it.

7. If a man marries a woman who is then found to have no regular menstrual period, so that she feels the onset of menstruation only as the flow of blood commences, she should not indulge in sexual intercourse without making use of two rags to examine herself therewith, one before intercourse, and the other after. This is in addition to the rag with which the man should wipe himself, as will be explained in the Laws Concerning Forbidden Intercourse.

8. Even though this is a serious defect, she does not forfeit anything, inasmuch as she does examine herself first before she has intercourse.

If she first examines herself and then has intercourse, and if thereafter, as she and he wipe themselves, blood is found on her rag or on his rag, once this happens three times in succession, she is forbidden to abide with her husband, and must be dismissed without her kĕṯubbah, either the statutory or the supplementary amount, or any of the stipulations attached thereto, inasmuch as she is unfit for sexual intercourse. He must, therefore, dismiss her, and may never remarry her, lest she should be cured later, and it should be found that at the time of the divorce his mind was not set on divorcing her.

She may, however, marry another man, as will be explained in the discussion of menstruation.

9. When does this apply? If she exhibits these symptoms from the beginning of her marriage, and notices blood after the first intercourse. If, however, this disability occurs after her marriage, it is her husband's misfortune.

Therefore, if he has intercourse with her once and no blood is found, but subsequently she notices blood at every act of intercourse, he must dismiss her and pay her her entire kĕṯubbah, and is forbidden to remarry her forever, as we have explained.

10. The same applies to a woman who develops defects after her marriage, even if she is stricken with boils; if the husband wishes to retain her, he may do so; if he wishes to dismiss her, he must pay her her kĕṯubbah.

11. If a man develops defects after his marriage, even such defects as the amputation of his arm or leg, or the blinding of his eye, and if his wife refuses to abide with him, he may not be compelled to dismiss her and pay her her kĕṯubbah; rather, if she consents to abide with him, she may do so; if not, she must be dismissed without her kĕṯubbah, like any other rebellious wife.

If, however, he develops bad breath or nasal odor, or if he turns to collecting canine droppings, hewing copper out of its source, or tanning hides, he must be compelled to dismiss her and pay her her kĕṯubbah. But if she is willing to abide with him, she may do so.

12. If a man is stricken with boils, he must be compelled to dismiss his wife and pay her her kĕṯubbah. Even if she is willing to abide with him, no attention need be paid to her, and they should be separated against their wishes, because she is bound to aggravate his condition. If, however, she says, "Let me abide with him in the presence of witnesses," so that he would have no intercourse with her, her wish may be honored.

13. If a woman's husband is afflicted with bad breath or nasal odor, or collects canine droppings, or has a similar defect; and if he dies, and she then becomes subject to levirate marriage with his brother who is afflicted with the same defect, she may say, "From your brother I could take it, but from you I cannot," whereupon he must submit to ḥălişah and pay her her kĕṯubbah.

TREATISE II

LAWS CONCERNING DIVORCE

Involving Two Commandments,
One Positive and One Negative
To Wit

1. That the divorcer should divorce with a writ;
2. That a man should not take back the woman he divorced after she had remarried.

An exposition of these commandments is contained in the following chapters.

NOTE

In the list of the 613 commandments prefixed to the Code, those dealt with in the present treatise appear in the following order:

Positive commandment:

[1] 222. To divorce with a writ, as it is said: *that he writeth her a writ of divorcement* (Deut. 24:1).

Negative commandment:

[2] 356. That a man should not take back the woman he divorced after she had remarried, as it is said: *her former husband, who sent her away, may not take her again to be his wife* (Deut. 24:4).

CHAPTER I

1. A woman may be divorced only by means of a writ that reaches her, and this writ is called get. There are ten rules that are basic to divorce, according to the Torah, and they are as follows:

1. That the man may not divorce his wife except of his own free will.
2. That he must divorce her by means of a writ, and not by means of anything else.
3. That the sense of the writ must be that he has divorced her and has removed her from his possession.
4. That its sense must be that it is an instrument which effects a severance between him and her.
5. That it must be written specifically for her.
6. That after the writing of it, no act must be lacking excepting only its delivery to her.
7. That he must deliver it to her.
8. That he must deliver it to her in the presence of witnesses.
9. That he must give it to her as an instrument of divorce.
10. That it must be the husband, or his agent, who gives it to her.

The other things that are involved in the get, such as the date, the signatures of the witnesses, and the like, are all of Scribal origin.

2. And whence do we know that these ten rules are derived from the Torah? From the verse, *And it shall come to pass, if she find no favor in his eyes, because he has found some unseemly thing in her, that he shall write her a bill of divorcement, and give it into her hand, and send her out of his house* (Deut. 24:1).

If she find no favor in his eyes implies that he may not divorce except of his own free will. If she is divorced against his will,

she is not validly divorced. The woman, however, may be divorced with or without her consent.

3. *That he shall write* teaches that she may not be divorced except with a writ. *Her* means that it must be written specifically for her. *A bill of divorcement* signifies an instrument which effects a severance between him and her, so that he does not retain any authority over her. If no such severance has yet been effected between him and her, she is not validly divorced, as will be explained.

And give it into her hand teaches that she is not divorced until the get is delivered into her hand, or into the hand of her agent, which is the same as hers, or into her courtyard, the whole of which is regarded as equivalent to her hand, as will be explained. *And send her out* implies that the sense of the get must be that he is sending *her* away, and not that he is sending *himself* away from her.

4. How so? If he writes for her, "Behold, thou art sent away," or "Behold, thou art divorced," or "Behold, thou belongest to thyself," or "Behold, thou art permitted to any man," or anything of similar import, she is validly divorced, for the substance of the get is "Behold, thou art permitted to any man."

On the other hand, if he writes for her, "I am no longer thy husband," or "I am no longer thy spouse," or "I am no longer thy man," it is not a valid get, for it is said, *and send her out,* not that he shall send himself out. Similarly, if a man writes for his wife, "Behold, thou art a free woman," it is not a valid get.

5. What is written in the Torah, *and send her out of his house,* does not signify that her divorce is not complete until she leaves his house; rather, that when the get reaches her hand, her divorce is complete, even if she is still in his house, as will be explained. For the statement *and send her out* implies no more than that if he had divorced her but did not remove her from his house, it is the same as if he had divorced her and then re-

married her, in which case she would require another get from him, as will be explained.

6. And whence do we know that the get must not lack any act after it is written? From the verse, *he shall write . . . and give* (Deut. 24:1), which implies that a valid get is one that requires only writing and delivery, and excludes one that requires any trimming after the writing.

Therefore, if a man writes a get on a cow's horn, he must give her the whole cow. If he cuts off the horn after writing the get upon it, and then gives it to her, it is not a valid get.

Thus also, if he writes the get on something attached to the ground—even if the witnesses write their signatures on it after he plucks it—and gives it to her, it is not a valid get.

7. Even the formal part of the get may not be written on anything attached to the ground. But if he writes the formal part while the thing is still attached to the ground, then plucks it, and thereupon writes in the names of the man and the woman, the date, and the formula "Behold, thou art permitted to any man," and then signs it and gives it to her, it is a valid get.

8. If he writes the entire get on a leaf planted in a perforated pot, the get is invalid, even if he gives her the entire pot, this being a precaution, lest he should pluck the leaf off. He may, however, write it on the surface of the pot itself and then give the pot to her.

9. And whence do we know that he must give the get to her exclusively as an instrument of divorce? From the verse, *a bill of divorcement, and give it into her hand,* which implies that he must give it to her as a writ of divorce.

If, however, he gives it to her on the understanding that it is a note of indebtedness or a mězuzah, or if he places it in her hand while she is asleep, and she awakens and finds it in her hand, it is not a valid get. But if he says to her afterwards, "Behold, this is thy get," it is a valid get.

10. If he first says to the witnesses, "Observe the get that I am giving her," and then turns to her and says, "Take this bill of indebtedness," it is nevertheless a valid get, inasmuch as he had made it known to the witnesses that he was giving it to her as a get; the only reason that he said to her "a bill of indebtedness," is that he felt embarrassed before her.

11. The divorcer must say to the divorcée, as he gives her the get, "Behold, this is thy get," or "This here is thy get," or something similar. If he delivers it into her hand and says nothing, the get is defective.

When does this apply? When he had not previously been discussing with her matters concerning her get. If he had been discussing her get with her, and then took the get and placed it in her hand without saying anything, it is a valid get.

12. If a get is lying upon the ground, and he says to her, "Pick up thy get from the ground," and she picks it up; or if it is tied to his hand or his thigh, and she pulls it off of him, it is not a valid get, even if after the get comes into her hand he says, "Behold, this is thy get." For it is said, *and give it into her hand,* implying that she herself may not take it, and here neither he nor his agent had given it to her. But if he inclines his body towards her, or stretches forth his hand until she pulls the get off of him, and he then says to her, "Behold, this is thy get," it is a valid get.

13. And whence do we know that he must give it to her in the presence of witnesses? From the verse, *Through two witnesses or three, shall a thing be established* (Deut. 19:16), and it is impossible that today the divorcée should have the status of a woman within the forbidden unions, so that he who has intercourse with her is liable to the death penalty imposed by the court, and that tomorrow she should become allowed to anyone, all this without attestation by witnesses. Therefore, if the husband gives her the get in privacy, or even in the presence of only one witness, there is no get whatsoever.

14. When does this apply? When the get is in the handwriting of a scribe. If, however, the husband writes the get in his own handwriting, and only one witness signs it, and the husband then gives it to her, the get is defective, although it disqualifies her from marrying a priest.

15. It is an enactment of the Sages that the witnesses must sign the get, lest he should give it to her in the mere presence of two witnesses and they should thereupon die, with the result that the get in her possession would become as worthless as an earthenware potsherd, since it has no witnesses in it. The Sages have therefore enacted that the witnesses must bear testimony out of the get itself.

Moreover, even though the witnesses are in the get, he still must deliver it to her in the presence of two witnesses, either the same two witnesses who have signed it, or two others, because the root of the divorce is established by the witnesses to the delivery.

16. If after two witnesses have signed it, he transgresses and gives the get to her in privacy, or if the witnesses to the delivery are found to be disqualified, the get remains valid, inasmuch as the witnesses in it remain qualified, and moreover the get is produced by her. There are some Geonim, however, who ruled that such a get is defective.

17. If the witnesses in the get are disqualified, or even if one is disqualified and the other is qualified, and the husband delivers the get to her in the presence of two qualified witnesses, the get is defective, because it is equivalent to a document containing an inherent flaw.

18. If the witnesses have signed a full two lines distance from the writing of the get, it is defective. How much space then may the witnesses leave between the writing and their signatures? Less than two lines, so that the signatures would be read continuously with the text.

When does this apply? When she produces the get, and no

witnesses to the delivery are present. If, however, the get was delivered to her in the presence of witnesses, it is valid, even if the attesting witnesses have signed far below, and the signatures are not read with the writing, or even if no witnesses have signed it at all, because the root of the divorce is established by the witnesses to the delivery.

19. The witnesses in whose presence the get is delivered must read it first, and only thereafter may the husband give it to her. If he first gives it to her in their presence, they must go back and read it after he had given it to her. If they read it while it is still in the hand of the husband or of his agent, and then return it to him, and he in turn puts it under his clothing and then gives it to her, they must go back and read it again.

20. If they do not read it again, and she takes it and throws it into the sea or into the fire, she is validly divorced, because inasmuch as the witnesses had read it at the beginning, there is no cause for apprehension that the husband may have exchanged it for something else. Not only that, but even if the husband declares, "This was a different document, and not the get that you had read," he is not to be believed, and she is validly divorced.

21. If they do not read it at the beginning, and he gives it to her in their presence, and she then throws it into the fire or into the sea, she is doubtfully divorced, even if the husband declares, "It was a valid get."

22. If he throws the get to her into her courtyard, among jugs, in the presence of witnesses, and when they search for it they find a mĕzuzah or some other document, there is no cause for apprehension on her account, because what they found is what he had thrown there. But if they find two or three mĕzuzahs or documents, there is cause for apprehension that mice might have dragged away the get that he had thrown there, and she is therefore doubtfully divorced.

23. The witnesses who sign the get must be able to read and to sign. If they are unable to read, others must read it before

them, and then they may sign, provided they understand the language of the get.

If they are unable to sign, others may trace the signatures for them on the paper with saliva or a similar substance that leaves no permanent mark, and they may write over the tracing. This procedure is not permitted with other documents, and is a leniency reserved for women's gets, in order that the daughters of Israel should not be reduced to the state of 'ăgūnah, seeing that signatures of witnesses are required by a Rabbinic enactment only, as we have explained.

24. Even though the requirement that witnesses must affix their signatures to the get is only Rabbinic, the Sages have enacted that the witnesses must write their names in the get in full. They have also enacted that the witnesses must sign in each other's presence, and that if they sign not in each other's presence, the get is defective. The Sages have enacted further that the get must bear the date and the place of its writing, as do other documents. This is a precaution, lest the wife should be her husband's blood relative and should play the harlot while she is yet under him, and he should then, subsequent to her infidelity, write a get for her and give it to her. Should the get bear no date, she would be able to say, "I was divorced before my harlotry." That is why the Sages have enacted that gets must bear dates.

25. A get bearing witnesses' signatures but no date, or predated, or postdated, or written during the day and signed on the following night, even if negotiations concerning it have been going on in the meantime, or written in Jerusalem and stated in error to have been written in Lod—all these are defective until signed at the actual time and place of the writing.

26. If he cuts off the date and delivers the get to her, or if he writes not the exact day but rather "the first" or "the second week of such-and-such a month," or writes "in such-and-such a month," or "in such-and-such a year," without specifying the month, or even "in such-and-such a septennate," the get is valid.

Thus also, if he writes in it, "today I have divorced her," it is valid, because the meaning is, this day when the get was issued.

27. The Sages have also enacted that gets should state the count of the years of the government that is in power at that time, for the sake of keeping the peace with that government. If one writes the name of a government that does not rule over that country, or the year since the building of the Temple, or the year since the destruction of it, the rule is that if it is the local custom to count by these, the get is valid. If it is not the custom to count by these, the get is defective.

The custom has long since been established in all Israel to date gets either from the creation or from the reign of Alexander of Macedon, which is called "the era of documents." But if one writes the date of the government of that time in the country ruled by that government, the get is valid.

28. If a man says to two persons, "Write a get, sign it, and deliver it to my wife," and the matter is delayed several days or several years, or if the get is found to be null and void, and they find it necessary several years later to write another and valid get, as will be explained, they must write the date and the place of the actual writing, and not the date when the husband had told them, "Write," nor the place thereof.

How so? If they were in Jerusalem when he had told them, and it was Tishre, and they were delayed until Nisan, and are now in Lod, they must date the get as of Nisan and state the place as Lod, since that is where the get is actually written, as is the rule for other documents.

CHAPTER II

1. The verse in the Torah, *he shall write her a bill of divorcement, and give it into her hand* (Deut. 24:1), includes both the one who writes with his own hand and the one who tells some-

one else to write for him; and also both the one who delivers it with his own hand and the one who tells someone else to deliver it to her. The reason for the statement *he shall write* is merely to indicate that she may be divorced only with a writ; and the reason for the statement *and* [*he shall*] *give* is to tell us that she may not take hold of it herself.

2. If a man says to two persons, "Write a get, sign it, and give it to my wife," they may write it, sign it, and give it to her, inasmuch as they serve both as his agents and as his witnesses.

Thus also, if he says to the scribe, "Write me a get for my wife," and requests the witnesses to sign it, the get may be written, signed, and given to him, and he may then divorce his wife with it whenever he wishes.

3. One may write a get for a man even if his wife is not with him, provided that the witnesses who sign it and the scribe who writes it know them enough to identify him as So-and-so and his wife as So-and-so.

If in that locality there are two men with the same name, and their wives' names are also identical, neither of them may initiate divorce proceedings except in the other's presence, as a precaution, lest one of them should write a get and deliver it to the wife of the other, thus causing her to become forbidden to her husband.

4. In times of danger it is permitted to write and deliver a get even without personal knowledge of the parties involved.

The woman may in all places pay the scribe's fee.

5. The husband himself must say to the scribe, "Write," and to the witnesses, "Sign."

Hence if the court, or two individuals, ask him, "Shall we write a get for your wife?", and he answers, "Write," and these very same people write it and sign it, it is valid.

If, however, they tell a scribe to write it and he does so, and if they tell the two witnesses to sign it and they sign it, the rule is that even if they turn around and give it back to the husband, and he in turn delivers this get to his wife in the presence of

witnesses, the get is null and void, because the person who wrote it is not the one told by the husband to write it.

6. If he says to two or three persons, "Tell the scribe to write a get for my wife, and tell the witnesses to sign it," and they tell the scribe and he writes the get, and tell the witnesses and they sign it; or if he says to two persons, "Tell the scribe to write a get for my wife, and you sign it," this get is defective. This matter requires a great deal of deliberation, because in this case the get is close to being null and void.

7. What is the difference between the term "defective" and the term "null and void"?

Wherever in this work it is stated that a get is null and void, it means that it is null and void according to the Torah; and wherever it is stated that it is defective, it is defective according to Scribal law.

8. If the husband brings with him a signed get and says, "Give this get to my wife," they may give it to her. If he tells others to write the get, sign it, and give it to his wife, and they write it, sign it, and give it to her, and the get is found to be null and void, they may write another get, even a hundred gets, until a valid get is delivered into her hand.

9. If the husband says to them, "Write a get, sign it, and give it to an agent to deliver to my wife," and they write it, sign it, and give it to the agent, and the get is then found to be null and void or defective, they may not write another get until they consult the husband, since he did not appoint them as agents for the divorce. Perhaps he wanted them to do no more than write the get and give it to the agent, leaving them no further act to perform, and they have indeed done the writing and the giving. Therefore they may not write another get. If they do write another get that is valid and give it to the agent, who delivers it to her, she is doubtfully divorced.

10. If a man says to two or more persons, "Write a get and give it to my wife"—or uses one of the following alternate terms:

"Divorce her," "Send her away," "Leave her," "Drive her out," "Write a letter and give it to her"—they may write a valid get and give it to her.

If he says to them, "Release her," or "Provide for her," or "Do unto her according to law," or "Do the customary thing unto her," or "Do the proper thing unto her," his words have no effect whatsoever, and if they thereupon write a get and give it to her, it is null and void.

11. If he says to them, "Put her out," "Leave her," "Make her permitted," "Let her alone," "Confer a useful thing upon her," there is doubt as to whether the meaning of these terms implies divorce or something else. Therefore they may not write a get for her. If they do write a get and give it to her, she is doubtfully divorced.

12. If a man says, "Write a get for my wife," the persons addressed may write it, sign it, and give it to the husband; they may not give it to the wife until he tells them to give it to her. If they nevertheless give it to her, there is no get.

When does this apply? When he is in sound health. It does not apply to a man who is dangerously ill, that is, one who is suddenly stricken with an illness that immediately becomes very grave; or a man who is led out in chains, even if the charge involves only money; or a man who embarks upon a sea voyage, or sets out on a caravan journey. In these cases, if he says, "Write a get for my wife," they may write it, sign it, and give it to her, because it is obvious that he indeed meant it to be both written and delivered to her.

13. If a sound person says, "Write a get for my wife," and they write it, sign it, and give it to her, and if immediately thereafter he commits suicide, as for instance, by jumping off the roof, or letting himself fall into the sea, that get is valid.

If he goes up to the roof and the wind blows him over, so that he falls down to his death, there is no get. If there is doubt as to whether he let himself fall or the wind blew him over, the

get is valid, unless it becomes positively established that the wind blew him over.

Similarly, if a man cast into a pit says, "Whosoever hears my voice, let him write a get for my wife," they may write it and give it to her, provided that they know him personally. And even if after he is brought up from the pit they find that they do not know him, the get is still valid, because this is analogous to the procedure in times of danger, when a get may be written and delivered even if the husband is not personally known to them.

Similarly, if a man who is so severely injured that it is impossible for him to survive—even if the greater part of his gullet and windpipe have been severed—indicates by gestures as much as to say, "Write a get for my wife," they may write it and deliver it, because at present he is still alive, even though he is bound to die.

14. If a man seized by an evil spirit says at the commencement of his affliction, "Write a get for my wife," his words are of no effect whatsoever, because his mind is not sound and settled. The same applies to a drunkard whose intoxication has reached the degree of Lot's drunkenness. If it did not reach that degree, the get is in doubt.

15. If he says while yet of sound mind, "Write and deliver a get to my wife," and then succumbs, they must wait until he recovers, and then write the get and deliver it to his wife. It is not necessary to consult him again after he recovers. But if they write it and deliver it before his recovery, the get is defective.

16. If a man who has lost his speech, but whose mind remains sound, is asked, "Shall we write a get for your wife?", and nods his head in assent, he must be examined three times, at intervals. If he answers "no" where "no" is proper, and "yes" where "yes" is proper, they may write the get and deliver it. He should, however, be examined carefully, since his mind may have become deranged.

Thus also, if he writes with his own hand, "Write and deliver

a get to my wife," they may write it and deliver it to her, so long as his mind is settled, because the rule concerning one who has lost his speech is not the same as the rule concerning a deaf-mute.

17. If a man is married while in sound health, and then becomes a deaf-mute, or needless to say, if he becomes an imbecile, he can never effect a divorce until he recovers, and one may not rely on the deaf-mute's gestures or on his handwriting, even if his mind is sound and settled.

If, however, he marries a woman while he is a deaf-mute, he may divorce her by gesture, since his marriage is not valid according to the Torah, as we have explained. Therefore, just as he may marry by gesture, so may he divorce by gesture.

18. If a man betrothes a minor girl through the agency of her father, and then divorces her while she is still a minor, her father may accept her get, and as soon as the get reaches him, she is divorced.

If the husband divorces her while she is a maiden, she is divorced as soon as the get reaches either her or her father.

An espoused maiden may not appoint an agent to receive her get from her husband while her father is still living. Her father, however, may appoint an agent to accept the get in behalf of his espoused daughter, whether she is a minor or a maiden.

19. If her father had her betrothed while she was a minor, and then died, she is validly divorced when the get reaches her hand, provided that she can distinguish between her get and any other object. If she cannot, she is not divorced until she is able to do so. If her husband does divorce her nevertheless, she is not divorced.

20. If a person who may be legally compelled to divorce his wife refuses to do so, an Israelite court in any place and at any time may scourge him until he says "I consent." He may then write a get, and it is a valid get. Similarly, if it is heathens who whip him and say to him, "Do what Israelites tell you to do," so that Israelites exert pressure upon him through the heathens

until he goes through with the divorce, the get is likewise valid. But if heathens on their own initiative exert pressure upon him until he writes the get, it is defective, inasmuch as the law does require him to write it. And why is this get not null and void, seeing that it is the product of duress, whether exerted by heathens or by Israelites? Because duress applies only to him who is compelled and pressed to do something which the Torah does not obligate him to do, for example, one who is lashed until he consents to sell something or give it away as a gift. On the other hand, he whose evil inclination induces him to violate a commandment or commit a transgression, and who is lashed until he does what he is obligated to do, or refrains from what he is forbidden to do, cannot be regarded as a victim of duress; rather, he has brought duress upon himself by submitting to his evil intention. Therefore this man who refuses to divorce his wife, inasmuch as he desires to be of the Israelites, to abide by all the commandments, and to keep away from transgressions—it is only his inclination that has overwhelmed him—once he is lashed until his inclination is weakened and he says "I consent," it is the same as if he had given the get voluntarily.

If the law does not authorize the use of force to make him execute the get and an Israelite court erroneously does force him to do so, or if the court is composed of laymen who press him until he executes the get, the get is defective.

Since, however, it was Israelites who put pressure upon him, he should rather make up his mind and do it voluntarily.

If it was heathens who had pressured him in defiance of the law, there is no get, even if he had said to the heathens, "I consent," and then said to Israelites, "Write a get and sign it," inasmuch as in this case the law does not obligate him to divorce, and it was heathens who put pressure upon him.

CHAPTER III

1. Any get not written expressly for the man who is divorcing and for the woman who is being divorced is no get.

How so? If a scribe writes a get in order to teach or practice, and if the husband comes along and finds that the man's name written in this get is the same as his, and the woman's name the same as his wife's, and the name of the city the same as that of his city, and if he takes it and divorces his wife with it, there is no get.

2. Moreover, if a man writes a get to divorce his wife therewith, but subsequently changes his mind, and if he then meets a fellow townsman who says to him, "My name is the same as yours, and my wife's name is the same as your wife's," and takes the get from him and divorces his own wife with it, there is no get, even though it was written expressly for the purpose of divorce.

3. Moreover, if a man has two wives who have identical names, and writes a get in order to divorce the elder wife, but changes his mind and divorces the younger wife therewith, there is no get, because even though it was written expressly for the man who is divorcing, it was not written expressly for this woman who has been actually divorced therewith.

4. Moreover, if a man says to a scribe, "Write me a get, and I will divorce therewith whichever wife I shall decide upon," and if the scribe writes it with this stipulation in mind, and the husband then divorces one of his wives with it, the divorce is in doubt.

Any get written by a scribe not expressly in the wife's name is not valid, even if thereafter he goes over it with a pen with that intent.

5. If a man writes a get to divorce his wife therewith, but changes his mind and does not divorce her, and subsequent to writing it secludes himself with her, he may not use his get again should he want to divorce her. But if he does divorce her with this old get she is validly divorced, and may at the outset proceed to remarry, inasmuch as it was written expressly for her, and he has now given it to her in the presence of witnesses, as the law prescribes. And why should his divorce from her not have come

into force from the outset? As a precaution, lest people should say, "Her get antedates the birth of her child."

6. If a man says to a scribe, "Write a get for such-and-such a woman, and I will keep it with me, and after I shall have married her I will divorce her therewith"; and if the get is written, and he marries the woman, and then divorces her with this get, there is no get, because when this get was written she was not subject to divorce from him, hence the document was not written expressly for the purpose of divorce.

If, however, he says to the scribe, "Write it for my spouse, and after I shall have married her, I will divorce her," and if he then consummates the marriage with her and thereupon divorces her therewith, the get is valid.

If he writes it for his yĕḇamah, and after contracting levirate marriage with her, divorces her therewith, the divorce is of doubtful validity, inasmuch as she was not completely his wife when he wrote it.

7. For the convenience of the scribe, the Sages have permitted him to write out the formal parts of bills of divorcement, leaving blank spaces for the names of the man and the woman, the date, and the formula "Behold, thou art permitted to any man," so that he may write these in later expressly for the particular man who is divorcing and the particular woman who is being divorced, and then the witnesses would sign expressly for him and for her.

8. If a scribe writes a get expressly for the particular man and woman involved, as the law requires, but the witnesses sign it without the express intention, the get is valid, (so long as he has handed it to her before witnesses. It is, however, defective. And why is it not null and void?) Because the requirement that the witnesses must sign the get is merely a precautionary measure.

There is, however, one authority who maintains that if the witnesses have signed it not expressly for the wife, the get is null and void, because it resembles a document that has a flaw within

it. Similarly, if one of the witnesses is disqualified, or if it has only one qualified witness, the get is null and void, even if it is delivered in the presence of witnesses.

This view does not seem correct to me, because such a get merely resembles a flawed document, and is not an assuredly flawed document; therefore, since it was delivered in the presence of qualified witnesses, it is defective according to Scribal law.

9. If a person brings along a get, loses it, and then finds it, the rule is as follows: If he loses it in a place that is not frequented by caravans, the presumption is that the lost get is the get that was found, even if he found it a long time afterwards, and the wife may be divorced therewith.

If it was lost in a place that is frequented by caravans, the rule is as follows: If he recovers it immediately and no passerby has as yet tarried in that place, or if he finds it in the same vessel wherein he had left it, and he recognizes the get by sight, namely by its length or breadth, the way it was rolled up, the presumption is that it is the lost get, and the wife may be divorced with it.

10. If the presumption is that another man in the same locality has the same name as the one stated in the get, there is cause for apprehension that the get which was found may belong to that other man, inasmuch as someone did pass by there, even though he did not tarry. Therefore, if the woman is divorced with this get, she is doubtfully divorced.

If, however, no person had passed through there, the presumption is that the get was issued by the first of the two men, even though it is presumed that there are two in that locality who bear that same name.

11. If the witnesses have a clear identification mark in the get, as for example, if they say, "There is a hole in it next to such-and-such a letter," or if they say, "We never signed any get but the one which has the same names as these," the presumption is that the lost get belongs to the first of the two men, and the woman

may be divorced with it, even though it was found a long time afterwards and in a place frequented by caravans, and even though it is presumed that there are two persons in that place who bear the same name.

12. If two persons sent out two gets, and they become mixed up, both should be delivered to each one of the wives in the presence of witnesses to delivery. Therefore, if one of the gets is lost, the other becomes null and void.

13. If a man has two names, and so also if a woman has two names, the rule is that when he executes the divorce he must write the name by which each one of them is more commonly known, thus: "So-and-so, or whatever other name he may have, divorces So-and-so, or whatever other name she may have." If the scribe writes only his and her surname, the get is valid.

14. If he writes the names by which they are not most commonly known, and adds "or whatever other name he may have," the get is defective.

If he changes his or her name, or the name of his or her city, there is no get, even if he adds "or whatever other name he or she may have."

15. Any person is qualified to write a get, with the exception of these five: a heathen, a slave, a deaf-mute, an imbecile, and a minor. Even the woman herself may write her own get.

An Israelite who has been converted to heathenism, or who publicly profanes the Sabbath, has the status of a heathen in every respect.

16. And why are these five not qualified to write it? Because he who writes the get must write it expressly for the man who divorces and for the woman who is being divorced, whereas the heathen might follow his own idea; a deaf-mute, an imbecile, and a minor do not have normal understanding; and a slave is not subject to the laws of marriage and divorce, and is therefore just as disqualified in every respect as a heathen. If one of

these five does write a get nevertheless, there is no get, even if qualified witnesses have signed it and it was delivered to the woman in the presence of qualified witnesses.

17. If one of these five writes the formal part of the get, and leaves blank the spaces for the particular part, that is, the names of the man and woman, the date, and the formula "Behold, thou art permitted to any man," and an adult Israelite of sound mind thereupon writes these in expressly for the parties concerned, it is a valid get.

18. It is permitted at the outset to let a deaf-mute, an imbecile, or a minor write the formal part of the get, provided that an adult of sound mind supervises them. A heathen or a slave, however, may not at the outset write the formal part, even if supervised by an Israelite, because at the outset the permission to write forms of gets not expressly for the parties concerned, was granted only for the convenience of the scribe, as we have explained.

19. If a man unwittingly writes a get on the Sabbath or on the Day of Atonement, and delivers it to his wife, she is validly divorced. If he willfully writes it and signs it on that day, and delivers it to her, she is not validly divorced, because the witnesses are disqualified according to the Torah.

If he writes it willfully on a festival day, and it is delivered to her on a festival day in the presence of qualified witnesses, the get is defective.

CHAPTER IV

1. A get must be written only with material that leaves a permanent mark, such as ordinary ink, red dye, gum ink, vitriol, and the like. If one writes it with material that is not permanent, such as beverages, fruit juices, and the like, there is no get. If he writes it with lead, stylus, or coal, it is valid, but one should not at the outset write with these.

2. One may at the outset write with gallnut juice on paper, hide, and the like, but not on a gallnut treated scroll, because the writing would not be visible. If he does write a get on a scroll, there is no get. The same applies to all similar cases.

A get may be written on any material, even one forbidden for benefit. It may be written even on material on which writing can be falsified, provided that the husband gives it to the wife in the presence of witnesses to delivery.

3. How so? He may write it on paper from which previous writing had been erased, on only partially treated skin, on a potsherd, on leaves, upon a slave's hand or a cow's horn, and may then deliver to her the slave, or the cow, or the erased paper, or the partially treated skin, or the like, in the presence of witnesses.

4. If a get is tattooed upon a slave's hand, and he is produced by the woman with the signatures of the witnesses likewise tattooed upon his hand, the woman is validly divorced, even if she has no witnesses to delivery, because such a get cannot be falsified.

Even if the slave upon whose hand the get is tattooed, and who is produced by the woman, is presumed to belong to the husband, and if she says, "He was delivered to me in the presence of witnesses," she is nevertheless doubtfully divorced, because the slave may have gone to her on his own initiative, for there is no presumptive title to livestock.

5. If a get is engraved upon a board, with the witnesses' signatures on it, and is in her possession, she is validly divorced, even though the presumption is that the board is hers, inasmuch as a woman may write her own get; for the certification of a get is effected by the witnesses signed on it, if there are no witnesses to delivery.

6. If one engraves a get on a board, a stone, or a metal plate, the rule is as follows: If he scoops out the legs of the letters, the get is valid, because this constitutes writing, as it is said, *Written with a pen of iron* (Jer. 17.1), implying that he scooped out the

writing. The same applies if he engraves the letters from the back of the plate, so that they stand out on the face of it.

If, however, he scoops out the hollow inside of the letters, so that the legs rise above the hollow inside on both sides thereof, just like the writing on a gold denar which appears in reverse relief, there is no get, because this does not constitute writing.

7. If one merely scrapes a hide in such a way as to form writing, or makes a tracing on it in the form of writing, it is valid.

The get may be written in any script and in any language. If it is written in the script of one tongue, and the witnesses sign it in the script of another, it is valid, provided that the witnesses are familiar with the language of the script and the writing.

8. If one of the witnesses signs in the script of one language and the second witness in the script of another, it is valid. If, however, part of the get itself is written in one language and part in another, it is defective.

9. Whatever language the get is written in, the scribe should be careful with the wording, in order that it might not be so ambiguous that the reader would say, "Perhaps he referred to such-and-such a matter, which does not imply divorce; but then again, perhaps he referred to this subject, which does indeed imply divorce." The wording should rather be such as to admit of no doubt in that language, and should have only one implication, namely that So-and-so has divorced and sent away So-and-so.

10. Thus also, the writing should be clear in the particular script that he is using, so that even children, neither bright nor dull, but average, who are acquainted with that script, might be able to read it.

The script should not be crooked or confused, lest one letter should look like another, with the result that the meaning would be altered.

11. If the language is ambiguous, or if the script is crooked or confused, so that another meaning might be read from it, the get

is defective, so long as it was read for the purpose of divorce and can be understood as implying divorce.

It has long been the custom among all the people of Israel to write the get in Aramaic, according to the following form, even though it is permitted at the outset to write it in any language.

AND THIS IS THE FORM OF THE GET:

12. "On such-and-such a day of the week, on such-and-such day of such-and-such month, and in the year so-and-so of the creation, or of the era of documents, according to the reckoning that is customary here, in such-and-such place, (it happened thus): I, So-and-so, the son of So-and-so, of such-and-such place, or whatever other name or surname may have been used for myself, my forefathers, my own place, and my forefathers' place, have resolved of my own free will, without duress, and have accordingly released, let go, sent off thee unto thyself, So-and-so, the daughter of So-and-so, of such-and-such town, or whatever other name or surname may have been used for thyself, thy forefathers, thy place, and thy forefathers' place, who hast been my wife heretofore; and I now release, let go, and send off thee unto thyself, that thou mayest be authorized and empowered over thine own self to go forth and be wed unto whatsoever man thou mayest wish. And let no man restrain thy hand, from this day on and forevermore. And behold, thou art permitted to any man. And these presents shall be unto thee from me a writ of sending off, a get of release, and a letter of letting go, according to the law of Moses and Israel."

The witnesses must sign below, as we have explained, thus; "So-and-so, the son of So-and-so, witness; So-and-so, the son of So-and-so, witness."

13. When one writes the get in this language and according to this form, he should not spell the word *wĕ-ḏen* ("and these presents") with the letter *yoḏ*, lest the reader should read it *wĕ-ḏin*, meaning "and there shall be litigation between me and thee."

Nor should he spell the word *wĕ-ʾiḡraṯ* ("and a letter") with the letter *yoḏ*, lest the reader should read it *wĕ-ʾi ḡart*, meaning, "if thou shouldst play the harlot." He should also not spell the word *li-mĕhaḵ* ("to go forth") with the letter *yoḏ*, lest the reader should read *li mĕ-haḵ*, meaning "unto me henceforth." In the same word he should also leave ample space between the left leg of the letter *he* and its roof, lest it should be read *li-mĕḥaḵ*, meaning "to jest." The words *tihwĕyin* ("thou mayest be") and *tiṣbĕyin* ("thou mayest wish") should not be spelled with a double *yoḏ*, lest the reader should read them *tihwĕyan* and *tiṣbĕyan*, implying that the husband is speaking to two women, and is thus divorcing not this particular woman but two others. Similarly he should make the letter *waw* in *wĕ-ḵaddu* ("and now") long, lest it should look like a *yoḏ* and make the word read *u-ḵĕḏe*, meaning "on this condition will I release thee." The same letter *waw* should be made long also in the words *taroḵin* ("sending off") and *šĕḇuḵin* ("letting go"), lest it should look like a *yoḏ* and make the words read *tĕriḵin* and *šĕḇiḵin*, implying that he is saying to her that she has let him go and has divorced him. In this manner it is necessary to be careful about whatever language or script one is using, so that the meaning might not be ambiguous.

14. If one writes this form but does not lengthen these *waws*, or does not write the extra *yoḏs*, or writes the *yoḏs* that we have said should not be written, the geṭ is defective. The same rule applies in all similar cases, in any language.

15. If a geṭ has a letter or a word erased or suspended between the lines, the rule is as follows: If this occurs in the formal part of the geṭ, it is valid; if in the particular part, there is no geṭ. If, however, a codicil at the end of the geṭ goes back to explain that such-and-such a letter was suspended or was written in over an erasure, then, even if the correction was made in the particular part of the geṭ, it is valid, as is the case in other deeds. So also, if a geṭ is found torn lengthwise and across, which is the

method of tearing used in the court, it is null and void, as in the case of other deeds. If, however, the get is torn in a manner different from that used in the court, it is valid.

16. If the get has decayed, or rotted, or become like a sieve, it is valid. If the writing is blotted out or blurred, but its outline is still intact, the rule is as follows: If it can still be read, it is valid; if not, there is no get.

17. When does this apply? When the get is produced by the woman, with witnesses' signatures on it, but without witnesses to delivery. If, however, there are witnesses in whose presence the get was delivered to her as a valid get, it is still valid, even if the particular part of the get was written over an erasure or between the lines, or if the get was torn lengthwise and across when it was delivered to her in their presence.

18. If five men write one get for their five wives, the rule is as follows: If they write it jointly, as for example, if they write "On such-and-such a day of the week . . . A has divorced B, C has divorced D," and so forth, and in this fashion each one says to his wife, ". . . unto thyself, so that thou mayest be . . . ," and the rest of the form of the get, and two witnesses sign below, it is a valid get, and it may be delivered to each woman in the presence of witnesses to delivery.

If there are no witnesses at all to delivery, only the one who produces this scroll is divorced.

If, however, one writes, "On such-and-such a day of the week . . . A has divorced B," and completes the get; and if thereupon, below this get, he commences writing another get on the same scroll, and writes, "And on the same day," or "on such-and-such a day of the week . . . C has divorced D," and completes the second get, and so forth, until he executes the several gets, and the witnesses sign below them all, the rule is as follows: If this scroll is given to each one of the women in the presence of witnesses to delivery, they are all validly divorced. If there are no witnesses to delivery, and the scroll is produced by only one of

the women, the rule is as follows: If this woman is the one whose get is last, directly followed by the signatures of the witnesses, she is validly divorced. If, however, the scroll is produced by one of the other women, she is doubtfully divorced.

19. If he writes, "We, A and B, have divorced our wives C and D," and then completes the get, there is no get, even if it is delivered to each one of the women in the presence of witnesses to delivery, because two women may not be divorced with one get, for it is said, *he shall write her* (Deut. 24:1), not "her and her companion." If, however, he specifies them further on in the get by writing, "A has divorced C, and B has divorced D, at such-and-such a time," these gets are valid.

20. If he writes two gets in two columns on the same scroll, side by side, with two witnesses' signatures at the end of one get and two at the end of the other, it is valid, and whichever woman produces the scroll, she is validly divorced.

21. If only two witnesses have signed, and their signatures extend from below one get to below the other, the rule is as follows: If the document is produced by the woman with whose get the signatures of the witnesses form a natural sequence, she is validly divorced. If it is produced by the other woman, with whose get the signatures do not form a natural sequence, there is no get, unless her husband delivers it to her in the presence of witnesses.

22. If he writes two gets in two columns, one above the other, and the witnesses' signatures are between the two, that is, below the first get and above the second, the rule is as follows: If the document is produced by the woman whose get concludes with the signatures, she is validly divorced, while the woman whose get is preceded by the signatures is not validly divorced.

If the witnesses' signatures are at the top of the column in which the get is written, or at the side, or on the back of it, there is no get; if, however, it is delivered to the woman in the presence of witnesses, it is valid.

23. If the top of one column is joined to the top of the other, and the witnesses' signatures are in the middle, thus being at the head of either get, both are null and void. But if they are delivered to the recipients in the presence of witnesses, they are both valid.

24. If one leaves part of the get and writes it in a second column, with the witnesses' signatures below at the end of the second column, it is valid, provided that it is clear from the scroll that it was not trimmed and that it was the scribe's original intention to complete the get in the second column.

If this is not clear, the woman is doubtfully divorced, even if the get is delivered in the presence of witnesses. For there might have been two gets, with part of one cut off at the end of one column and part of the other cut off at the beginning of the other column.

25. If one writes a get, and after completing it adds, "Inquire, I pray you, about the welfare of So-and-so," or "Peace be unto you, So-and-so, my friend," or the like, and if the witnesses sign below, and the woman produces this get, she is doubtfully divorced, since it may be that the witnesses affixed their signatures only to the greetings.

If, however, he writes, "*And* inquire, I pray you, about the welfare of So-and-so," or "*And* peace be unto you, my friend," or the like, the woman is validly divorced, inasmuch as he had joined these words to the words of the get, and the signatures were therefore affixed to both.

If the get is delivered to her in the presence of witnesses, it is valid in either case.

CHAPTER V

1. The statement in the Torah, *and give it in her hand* (Deut. 24:1), means only that the get must reach her, and it makes no difference whether it reaches her hand, or her lap, or her court-

yard, or her agent, whose hand she had made the equivalent of her own hand—it is all the same.

It also makes no difference whether the courtyard is owned by her, or has been leased or borrowed by her—whichever is the case, it is considered her domain, and once the get reaches her domain, she is validly divorced.

2. If a man throws a get to his wife into her courtyard, the rule is as follows: If she stands there alongside her courtyard, she is validly divorced; if not, she is not divorced until she does stand alongside her courtyard. This rule applies even if the yard is such that the get will remain secure in it, because the divorce is a matter of disadvantage to her, and one may not commit a legal act to another person's disadvantage except in his presence.

3. If she stands on top of her roof, while he stands below in his courtyard, and he throws the get up to her, she becomes divorced as soon as it reaches the air space within the partitions of the parapet, or comes within less than three handbreadths from the roof, provided that it actually lands there. If, however, it is blotted out or burned before it reaches her, there is no get, and she is not validly divorced, even if it is blotted out after it has reached the air space within the partitions or come within less than three handbreadths from the roof, as for instance, if then a wind blows up and carries it aloft, thus causing it to be blotted out or burned, inasmuch as it is not going to land.

4. If the roof is his, and he is on it above, while she is in her courtyard below, and he throws her get down to her, she is validly divorced as soon as it leaves the air space within the partitions of the roof and reaches the air space within the partitions of the place where she is standing.

5. If he throws it into her domain and into a fire, so that it is burned, or into water, so that it is blotted out or lost, there is no get.

If, however, it reaches her domain [and lands], and then a fire supervenes and burns it, it is a valid get.

6. If he throws it onto the point of a pole or spear planted in the ground of her domain, there is no get until it lands in a space where it will remain secure.

If there are two yards one within the other, the inner one hers and the outer one his, and the walls of the outer one are higher than the walls of the inner one, she is divorced as soon as he throws the get into the air space within the outer courtyard, because the inner courtyard is protected by the walls of the outer one. This rule, however, does not apply to baskets.

7. How so? If there are two baskets, one within the other, the inner one hers and the outer one his, and he throws her get to her into them, the rule is that even if it reaches the air space within the inner basket it is not a valid get until it lands on the side of the inner basket.

When does this apply? When the basket is lying on its side and has no bottom. If it has a bottom, the rule is that even if the get lands on this bottom, she is not divorced, because a woman's vessel is her husband's domain, and consequently cannot acquire possession of the get for her, unless the husband is not particular about the vessel's location.

8. If he throws her get to her while she is inside his house or inside his courtyard, she is not divorced until it reaches her hand, or one of her vessels, the location of which the husband is not particular about, as for example, a flask, a small basket, or the like.

Similarly, if the get lands on her couch while she is sitting on it, and it is ten handbreadths high, she is validly divorced, because she has made her part of the couch her own domain, and the husband is not particular about the location of the legs of the couch.

9. If the husband lends her a place in his courtyard, but does not delimit it for her, and throws a get to her in such a way that it lands inside her own four cubits within which she is standing, she is validly divorced.

If the get rolls over and lands upon a beam or a rock at a distance from her, the rule is as follows: If the place where it lands is less than four cubits square and less than ten handbreadths high, and has no individual name, it is not accounted a separate domain, and therefore it is as if the get and she were in the same place.

If one of these three specifications is present, a separate domain is constituted thereby, and since he had lent her only one place and not two, she is not divorced until the get reaches her hand.

10. If he throws her get to her into her own domain, but it passes through her domain in which she is standing and lands outside of it, even if it passes at a height less than three handbreadths from the ground, she is not divorced until it does land in her domain.

11. If she stands on her roof, and he throws it to her, but it lands on another roof nearby, she is divorced if she can stretch out her hand and pick it up, because even though dwellings are separated above just as they are below, people are not particular about right of domain in such portions of the dwelling as this roof.

12. If her hand is pointing downward, so that when he throws the get into her hand it falls to the ground, the rule is as follows: If it falls within her own four cubits and lands there, she is divorced. If it falls into the sea or into fire, she is not divorced, provided that she is standing over the water or near the fire, in which case as soon as the get begins to fall it is bound to be destroyed.

13. If he throws the get to her into a public domain, or into a domain that belongs to neither one of them, the rule is as follows: If it lands nearer to him, she is not divorced. If it lands midway, or between midway and nearer to her, she is doubtfully divorced.

If it lands near enough to her so that she can bend down and pick it up, it is defective until it reaches her hand. Only then can she at the outset remarry on the strength of it.

14. What is "nearer to him." If he can watch it while she cannot, that is "nearer to him." If both can watch it, or neither can, that is "midway."

15. If he arrives first and stands there, and then she comes to stand facing him, and he throws the get to her, the rule is that if the get remains within his own four cubits, she is not divorced even if she could pick it up by bending down.

If she is there first, and then he comes to stand facing her, and throws the get to her, it is defective until it reaches her hand, even if it lands midway, inasmuch as it has landed within her own four cubits.

16. If he throws a get into her hand while it is attached to a string, part of which is held in his hand, the rule is as follows: If he can by pulling the string bring the get back to himself, she is not divorced until the string is severed. If he cannot pull it back, she is validly divorced.

17. If he delivers the get into the hand of her slave who is awake and whom she is watching, the rule is as follows: If the slave is bound, the get is valid, and it is the same as if it had reached her courtyard alongside of which she was standing. If the slave is unbound, there is no get.

If he delivers it into the hand of the slave who is asleep and whom she is watching, the get is defective. But if he is bound, she is validly divorced.

18. If he writes a get and delivers it into the hand of his own slave, and then conveys him by a writ of gift to her, the rule is as follows: If the slave is bound, then, once she acquires title to the slave, she also acquires title to the get, and is therefore validly divorced. If he is not bound, and is awake, she acquires title to the slave, but is not divorced until the get reaches her hand.

Similarly, if he delivers the get into his own courtyard, and then sells the courtyard to her, or gives it to her as a gift, she is validly divorced once she acquires title to the courtyard, whether by deed, by money, or by permission.

CHAPTER VI

1. The agent appointed by the woman to receive her get in her behalf from her husband's hand is called "receiving agent." As soon as the get reaches her agent's hand, she is divorced, just as if it had reached her own hand.

She must appoint him in the presence of two witnesses, and she must have two witnesses to testify that the get had reached her agent's hand. Even if the latter witnesses are the same as the former, or if one of the latter is the same as one of the former, it is perfectly valid testimony.

2. When does this apply? When the get is lost or torn. If, however, the get is produced by the receiving agent, there is no need for witnesses. Whether the husband had given it to him privately, or it was delivered to him in the presence of witnesses, so long as he produces the get, it is the same as if it was produced by the woman herself.

Nevertheless the husband should not at the outset deliver the get to the agent except in the presence of witnesses to delivery, the same as he would have to do if he delivered it to the woman herself.

3. The husband has no authority to appoint an agent to receive the get in behalf of his wife—he has authority only to appoint an agent to convey it to her. The latter is called "conveying agent."

4. The woman may also appoint an agent to bring the get to her from her husband, and this agent is called "fetching agent." The appointment of a conveying or fetching agent requires no witnesses.

5. The woman is not divorced with the get sent by her husband or brought to her by the fetching agent until it reaches her own hand.

Wherever in the discussion of gets the term "agent" is mentioned without further qualification, it refers to a conveying or fetching agent.

6. All persons are qualified to act as agent, receiving, conveying, or fetching, for a get, with the exception of the following five: a heathen, a slave, a deaf-mute, an imbecile, and a minor. If one of these receives it or brings it, there is no get.

7. Women and relatives, however, are qualified. Even those who have been disqualified for transgression against a Scribal enactment are qualified to act as agents for a get.

Those, however, who have been disqualified for a transgression against the Torah are ineligible to fetch a get. If they do fetch it, the get is defective.

When does this apply? When the get is validated by the witnesses who have signed it. If, however, the validation depends solely upon one who has been disqualified for a transgression against the Torah, there is no get.

8. If the agent had been a minor when given the get, and became an adult before he brought it; or a deaf-mute, and became sound again; or an imbecile, and became sane; or a heathen, and was converted; or a slave, and was manumitted, the get is null and void.

If, however, the husband had given the get to the agent while the latter was sound, and he thereafter became a deaf-mute, and then became sound again, or if he had been sane when given the get by the husband, then became an imbecile, and was sane again when he brought the get to the woman, the get is valid, because both at the beginning and at the end it was handled by a person of sound mind.

9. If a woman appoints an agent in the presence of witnesses, saying to him, "Take my get in my behalf, and let it be mine by your hand," he is a receiving agent, and it is the same as if she had said to him, "Receive my get in my behalf."

The woman may even appoint a receiving agent to accept her get in her behalf from her husband's conveying agent.

A minor girl may not appoint a receiving agent, even though her courtyard acquires her get for her, just as it does for an adult woman, because the appointment of a receiving agent requires witnesses, and no testimony may be given for the act of a minor, because his mind is not regarded as completely formed.

10. If a woman appoints a receiving agent, but the husband says to him, "I do not wish you to receive the get in her behalf; however, behold, here is her get—convey it to her," the husband's authority prevails, and the agent consequently becomes a conveying agent and not a receiving agent.

If, however, he says to the agent, "Receive her get in her behalf," or "Here it is for you," or "Acquire it for her," he has not thereby nullified the agent's appointment as receiving agent. On the other hand, if he says to the agent, "Convey it to her," he has thereby voided his receiving appointment and made him the conveying agent of the husband. The same applies if he says to the agent. "Convey it and give it to her"—he has thereby voided the receiving appointment.

11. If the woman's agent comes to receive the get from her husband, and says to him, "I am the receiving agent," and the husband replies, "Convey this get just as she has said," implying thereby, "I am not voiding your appointment; rather, whether she had appointed you receiving or fetching agent, you are to act in whichever capacity she has told you to act"; and if when the agent brings the get to her, she says to him, "I appointed you not receiving agent but fetching agent," she is not divorced even if the get reaches her hand. For the agent has in fact voided her appointment, since what he said to the husband amounted to the same thing as saying, "I was never appointed fetching agent for her."

12. If the agent says to the husband, "I am the fetching agent," and the husband replies, "Convey the get just as she had said"; and if when the agent brings the get to her, she says to him, "I appointed you receiving agent," she is divorced as soon as the get reaches her hand. For the agent did not void her appoint-

ment, but merely narrowed it, since she had said "I appointed you receiving agent," and he had said to the husband, "I was only appointed fetching agent."

13. If the husband sends a get to his wife, and when the agent comes to deliver it to her she does not accept it, but says to the agent in the presence of witnesses, "Let this get remain on deposit in your custody"; or says to him, "You are hereby appointed receiving agent in my behalf," she is doubtfully divorced until the get reaches her hand. Once it has reached her hand, she is assuredly divorced.

14. The agent, having brought a get and proceeded to deliver it to the woman, must do so in the presence of two witnesses. These two witnesses must read it, and then it must be delivered to her in their presence. For the status of the agent vis-a-vis the woman is the same as that of her husband, in whose stead he is acting. Therefore, if the agent gives it to her, but the witnesses to delivery do not read it, and she then takes it and throws it into the sea, she is doubtfully divorced.

15. If the agent transgresses and gives the get to her privately, he must take it back from her and give it to her again in the presence of two witnesses.

If the agent dies subsequent to the first delivery, the get is valid, inasmuch as it is produced by her and is validated by its signatories.

16. If an agent takes the get, but before it reaches the woman's hand the husband retracts and says to him, "The get that I sent with you is null and void"; or if the husband reaches the woman first and says to her, "The get that I sent you is null and void," or sends another agent to void it; or if he declares to other persons, "The get that I sent to my wife is null and void," it is null and void, even if it has already reached her hand.

Whosoever voids a get in the presence of other persons must do so in the presence of two of them. If the get has already reached the hand of the woman or of the receiving agent, the husband

may not void it. Even if he retracts within the time needed to make an utterance and voids it, it is not null and void, but remains a valid get, inasmuch as he has voided it after it had reached her hand, or the hand of the receiving agent, or her courtyard.

17. If he goes about seeking an agent in order to void the get, or two witnesses in order to void it in their presence, and if while he is so engaged, the get reaches her hand, and he voids it thereafter, it is not null and void, even though he had in fact sought to void it before it was delivered to her.

18. If he had said to ten persons, "Write a get and give it to my wife," he may void it in the presence of only one of these persons and in the absence of the others, or even in the presence of two persons other than these ten.

If he sends the get by the hands of two persons, he may likewise void it in the presence of only one of them and in the absence of the other. Even if there were ten such agents, if he voids it in the presence of one of them, the get is null and void.

19. Thus also, if a man says to two persons, "The get that I am about to write for my wife is to be null and void," and then writes a get and gives it to her in the presence of two other persons, the get is null and void. This is called "making a declaration against a get."

Similarly, if he says to them, "Any get that So-and-so may write for me shall be null and void," or "Any get that I may write in the court of So-and-so shall be null and void," or "Any get that I may write from now until twenty years hence shall be null and void," such a get is null and void.

Likewise, if he says in the presence of two persons, "Any get that I may write for So-and-so, my wife, shall be null and void, and anything wherewith I may annul this declaration is to be null and void," and then writes a get and gives it to his wife, the get is null and void, even though he had in fact invalidated his protest before he wrote the get.

20. This being so, what is the remedy for this situation? The witnesses should say to him before the writing of the get, "Declare in our presence that all the statements made by you heretofore, which, if made effective, would have annulled the get, are now themselves null and void." And he should say, "I do." After that he should tell them to write the get, sign it, and deliver it to his wife.

They should not let him go until the get has reached her hand, so that he might not go forth and void it once more.

Neither he who makes such a declaration nor he who annuls it needs a symbolic act of barter to ratify it.

21. If a man sends a get through an agent and then voids it, he may later reconsider and effect a divorce with the same get whenever he so decides, because he did not void the get itself, but only the agency.

Therefore, if the get is still in the husband's hand, and he voids it, as for example, by saying, "This get is null and void," he may never again use it to effect a divorce, for it is the same as a broken potsherd. If he does use it for such a purpose, the woman is not validly divorced.

Thus also, if he says specifically when voiding the get while it is in the agent's hand, "The get sent by me is hereby rendered null and void as a get," he may never again use it to effect a divorce.

22. What are the formulae with which a get may be rendered null and void? If one says, "It is null and void," or "I do not want it," or "This get shall be of no avail," or "shall not release," or "shall not leave," or "shall not send away," or "shall not divorce," or "shall be like a potsherd," or "shall be a potsherd," it does become the same as a potsherd. Once one pronounces one of these formulae, or one similar to them, the get is rendered null and void.

23. If, however, he says, "This get is no get," or "is defective," or "is of no avail," or "does not release," or "does not send away,"

or "does not divorce," or "is a potsherd," he has said nothing, because these are not formulae of annulment but rather statements of fact, and yet the fact stated is not a true fact. It is the same as if he had declared that a forbidden thing is permitted, or that an unclean thing is clean.

24. If he says, "This get has become null and void (*batal*)," which is a verb in the past tense, like *hamak* ("he has slipped away") and *'abar* ("he has passed"), the matter is in doubt. Therefore, if the woman is divorced with such a get, she is doubtfully divorced.

25. If a man sends a get to his wife, and the agent returns and says to him, "I did not find her," or "She refused to receive it," and if the husband replies, "Blessed be He who is good and does good," or uses a similar expression signifying that he is no longer of a mind to divorce her, seeing that he is happy that the get had been delayed, the get is not thereby rendered null and void, and the agent must once more give it to her so as to render her validly divorced, unless the husband tells him explicitly, "Do not give it to her," or definitely voids it.

26. If a man sends a get to his wife, and then, having changed his mind, voids it in the presence of two other persons, or makes a declaration against it, he is liable to a flogging for disobedience, because he causes children to be branded as bastards. For in the meantime the get may have reached her, and she may have remarried on the strength of it. Should witnesses appear later on and testify that the husband had voided it in their presence, or made a declaration against it in their presence prior to writing it, the child born of this marriage would become a bastard.

27. When an agent brings a get and delivers it to the woman, it cannot be said, "Perchance the husband has voided it"; rather it must be given to her on the presumption that it is valid, and that she may therefore remarry on the strength of it.

If thereafter it is found that he had indeed voided it, she must

leave her second husband, and the child of this marriage has the status of a bastard.

Thus also, when a man writes a get and gives it to his wife, it cannot be said, "Perchance he had made a declaration against this get"; rather the presumption is that it is valid and that she may remarry on the strength of it.

28. Similarly, if the agent bringing a get had left the husband ill or aged, he must give it to the woman on the presumption that the husband is still living. If, however, he had left him in a dying condition, the rule is that inasmuch as most people in a dying condition are bound to die, and one cannot effect a divorce posthumously, the validity of the divorce is in doubt, even though the get has already been delivered to her.

Similarly, if the husband is in a city surrounded by an army and subjected to siege, or in a ship tossed about by the sea, or has been accused of a capital crime, the presumption is that he is still living, and if an agent brings a get from such a one, he must give it to the wife, and she is presumed to be validly divorced.

29. On the other hand, if the husband was in a city stormed by an army and breached, or in a ship lost at sea, or was led out of a heathen court for execution, or was dragged away by a wild beast, or washed away by a river, or buried under a collapsed building, he is subject to the more rigorous regulations affecting both the living and the dead.

Therefore, if an agent has on hand a get from such a one, he may not deliver it to the wife. If he has already delivered it, she is doubtfully divorced. If it becomes known that the husband had in fact died before the get reached his wife, there is no get.

30. A husband who has sent a get to his wife is liable for her maintenance and for all the conditions attached to the kĕṯubbah, up to the time when the get reaches her hand or the hand of her receiving agent.

CHAPTER VII

1. When an agent brings a get from one locality within the Land of Israel to another, he may deliver it to the wife in the presence of witnesses, even if he himself was not present at the writing of the get and did not know the witnesses who signed it, so long as the husband had given him the get and had said to him, "Give this get to my wife." And even if the witnesses who have signed it are unknown in our place, the woman is validly divorced, and may remarry on the strength of it.

2. If the husband comes forth to contest the validity of the get, by saying, "I have never divorced her, and the get that was brought to her is fraudulent," it must be validated through its signatories.

If it cannot be so validated, and if the witnesses signed to it are totally unknown, she must leave her second husband, and the child born of this marriage has the status of a bastard, inasmuch as she was not validly divorced. If the get is lost, she is doubtfully divorced.

Therefore, the women who are presumed to dislike each other may not be trusted to bring a get to one another within the Land of Israel—perchance the get is fraudulent, and the one woman's intention is to disgrace the other by causing her to remarry and then become forbidden to her second husband.

3. The following women are presumed to dislike each other: the wife's mother-in-law; her mother-in-law's daughter; her co-wife, even if she is now married to someone else; her sister-in-law, even if she is her own sister; and her husband's daughter. All other women, however, are qualified.

4. If the agent who brings a get from one locality in the Land of Israel to another falls ill or meets with an accident, he may

send the get on with someone else. Similarly, if the second agent falls ill, he may send it on with a third person, and so forth, even up to a hundred. The appointment of such secondary agents requires no witnesses to attest it. The last agent in whose hand the get is entrusted may deliver it to the woman in the presence of two witnesses, and she becomes divorced therewith, even if the first agent had already died.

5. If the agent brings a get from one place outside the Land of Israel to another, or from the Land of Israel to another land, or from a land outside the Land of Israel to the Land of Israel, the rule is as follows: If the agent was present at the writing and signing of the get, he may declare in the presence of two witnesses, "This get was written in my presence, and was signed in my presence," and then give it to the woman in the presence of these same witnesses. She thereupon becomes validly divorced with this get, even if the witnesses who had signed it are unknown in our place. Even if the names of the witnesses in the get are of heathen origin, there is no need for apprehension.

6. If the husband comes forth to contest such a get, no attention need be paid to him. Therefore even women who dislike each other are qualified to bring such a get and to declare, "This get was written in my presence, and was signed in my presence."

7. Similarly, if an agent brings a get from one place within the Land of Israel to another and—even though this is in his case unnecessary—declares, "This get was written in my presence, and was signed in my presence," no attention need be paid to the husband, should he come forth to contest it.

If the agent was not present at the writing and signing of the get, it should not be given to the woman unless it is first validated through its signatories.

The agent may be one of the three persons who must validate the get through its signatories.

If the get is not validated, and the agent gives it to her, it

is defective until validated. If the husband comes forth to contest it, and the get is not validated, she is not validly divorced. If the get is lost, she is doubtfully divorced.

8. Why was it made necessary for the agent to declare in a land outside the Land of Israel, "This get was written in my presence, and was signed in my presence"? In order to make it unnecessary for the woman to validate it, should the husband come forth to contest it, because when a get is conveyed from one locality to another outside the Land of Israel, the witnesses are not readily available for its validation.

9. If the husband brings clear proof that this get, concerning which it was declared, "It was written in my presence, and was signed in my presence," is fraudulent, the get is null and void. For reliance upon one man's declaration that "It was written in my presence, and was signed in my presence," was permitted only in order to thwart the husband when his contesting claim is unsupported by proof. Where there are witnesses, however, who contradict the declaration, it can no longer be relied upon.

10. The rivers in the Land of Israel, and the islands of the Great Sea that are within the boundaries of the Land of Israel, have the same status as the Land of Israel. Those outside these boundaries have the same status as the lands outside the Land of Israel.

The boundaries of the Land of Israel will be explained in the Laws Concerning Heave Offerings.

As far as gets are concerned, Babylonia has the same status as the Land of Israel.

11. If a get was written in the Land of Israel but was signed outside the Land of Israel, the agent must declare, "It was written in my presence, and was signed in my presence." If it was written outside the Land of Israel, but was signed in the Land of Israel, this declaration is not necessary.

12. If only part of the get was written in his presence, but all of the witnesses signed it in his presence, the rule is as follows:

If the part witnessed by him was the initial part, he may say, "This get was written in my presence, and was signed in my presence," even if no more than one line was so written in his presence. Indeed, even if he merely heard the sound of the pen as it was writing, and the witnesses then signed in his presence, he may still say, "It was written in my presence, and was signed in my presence." The same applies if the scribe had gone out into the street and upon his return completed the get, and the agent may still make the same declaration; there need be no apprehension that someone else may have met the scribe and spoken to him, and that he thereupon wrote the get for another woman.

13. If the agent says, "This get was written in my presence, but was not signed in my presence," or "It was signed in my presence, but was not written in my presence," or "All of it was written in my presence, but only one of the witnesses, and not the other, signed it in my presence," it must be validated through the signatories and only then given to the woman, even if he himself was the second witness. If he himself and a third person attest the second witness who had signed when he was not present, the get is valid and may be given to her. Needless to say, if the handwriting of the second witness is attested by two other persons, it is valid.

14. If two agents convey a get outside the Land of Israel, they may deliver it to the wife, and she is validly divorced, even if it was not written and signed in their presence, seeing that the husband had given it to them to hand to his wife. For the husband cannot contest this get, even though it is not validated, since his agents are also his witnesses. Indeed, if these two agents had merely declared, "This woman was divorced in our presence," she would have been validly divorced, even if no get could be produced.

15. When does this apply? When the get is produced jointly by both of them. If it is not produced by both of them, they must

declare, "It was written in our presence, and was signed in our presence." Therefore, if one of them declares, "It was written in my presence," and the other declares, "It was signed in my presence," or even if both declare, "It was written in our presence," but only one of them says, "It was signed in my presence," it may not be given to the woman until it is validated through its signatories, inasmuch as it is not produced by both of them together.

16. If one of them declares, "It was written in my presence," and both declare, "It was signed in our presence," the get is valid, even if it is not produced by both of them, inasmuch as it was validated through its signatories.

17. If an agent conveys a get outside the Land of Israel and gives it to the woman privately, or if he gives it to her in the presence of two witnesses but fails to declare to her, "It was written in my presence, and was signed in my presence," he must, even if she had already remarried, take it back from her, give it to her again in the presence of two witnesses, and declare in their presence, "It was written in my presence, and was signed in my presence." If he does not take it back from her, the get is defective until it is validated through its signatories.

18. If having given the get to her, he loses his speech before he can declare, "It was written in my presence, and was signed in my presence," it must be validated through its signatories, and then given to her.

19. A blind man may not bring such a get originating outside the Land of Israel, because he is unable to declare, "It was written in my presence, and was signed in my presence." Therefore, if it was written and signed before him while he had normal sight, and he subsequently became blind, he must still declare in the presence of three persons, "It was written in my presence, and was signed in my presence," and may then give it to the wife.

Thus also, if it is a woman who brings such an outside get, she must declare in the presence of three persons, "It was written in my presence, and was signed in my presence." For the rule requiring two witnesses to the declaration applies only when the agent also is qualified to act as a witness, so that he can join the other two, with the result that this get is validated by three persons on the basis of his declaration, because a witness may act also as a judge in a matter involving a Rabbinic enactment.

20. If the agent falls ill or meets with an accident, he must come to court and declare before the judges, "This get was written in my presence, and was signed in my presence." The court must then send it on with another agent. The latter agent need not declare, "It was written in my presence, and was signed in my presence," but may merely say, "I am an agent of the court," and give the get to the woman in the presence of witnesses.

21. If the second agent falls ill or meets with an accident, he must appoint another agent before the court, and so forth, even if there are a hundred of them. The last one must declare, "I am an agent of the court," and may then deliver the get to the woman, even if the first agent had already died.

Why then is a court necessary? Because the first agent must declare, "This get was written in my presence, and was signed in my presence." If, however, the get is validated through its signatories, it remains valid even if the agents deliver it privately one to the other, even up to a hundred, before it reaches the woman's hand.

Even if the husband had not instructed the agent explicitly, by saying, "If you meet with an accident, forward the get through another agent," the agent may do so if he falls ill or meets with an accident.

22. When a person appoints an agent, it is not necessary for the appointee to appear with him at court. The person need merely declare to the court, "Behold, So-and-so is my agent," even if the appointee is not present.

Similarly, the agent may appoint another agent in the latter's absence, and so forth, even if there are a hundred of them.

23. If a man gives a get to his wife, written and signed in her presence, and says to her, "Behold, thou art my agent to convey this get unto such-and-such a court, and that court shall then appoint an agent to give thee this get whereby thou shalt be divorced," she may be relied upon when she declares before that court, "This get was written in my presence, and was signed in my presence." The court may then take this get from her and hand it to an agent for delivery to her according to the husband's instructions.

24. When does this apply? When the husband had made this stipulation. If the husband did not stipulate anything, but merely gave her her get, which she now produces, she need not declare anything, and is presumed to be divorced, so long as the get in her hand is properly written and the witnesses are signed to it. Even though we are not familiar with the handwriting of these witnesses, nor was the get validated, there need be no apprehension that she might have forged it, because the assumption is that she will not do mischief unto her own self. Furthermore, the status of the witnesses signed to the get is the same as that of witnesses whose testimony was investigated in court, with no one appearing to contest it as yet. The get is therefore presumed to be valid and allows her to remarry, nor need there be any apprehension that it may subsequently be found fraudulent, just as a get is presumed to be valid when brought by an agent, unless the husband contests it, or brings clear proof that it is fraudulent or null and void. For should we be apprehensive of such or similar things, we should be equally apprehensive of a get given by the husband in our presence, since he may have voided it beforehand and then given it; or the witnesses who signed it may be disqualified, thus making it a document with an inherent defect; or it may have been written not expressly for the particular woman. Just as we feel no apprehension about such things, and the like, but act on the presumption that the get is valid until such time as it may become known that it is null and void,

so need we feel no apprehension about the agent or the woman herself who produces the get, because the laws concerning ritually forbidden matters are not like the laws concerning money matters.

CHAPTER VIII

1. If a man attaches a condition to the divorce, his wife is divorced if the condition has been fulfilled. If it has not been fulfilled, she is not divorced.

We have already explained, in Chapter VI of the Laws Concerning Marriage, the rules governing all stipulations. There it was explained that when one attaches a condition to a divorce, the woman is divorced the moment the condition has been fulfilled, and not the moment the get is delivered into her hand. Therefore the husband may, even though the get has already been delivered to her, void it, or amplify the original condition, or add another condition, so long as the original condition has not yet been fulfilled.

If the husband dies, or the get is lost or burned before the condition has been fulfilled, she is not divorced.

The wife should not, at the outset, remarry until the condition has been fulfilled. If she has remarried nevertheless, she need not leave her second husband, unless it is no longer possible for her to fulfill the condition, for in that case the condition has become null and void.

It was also explained there that if the husband says to her, "Behold, thou art divorced as of now," or "as of today, on such and such a condition," or if he says to her, "Behold, thou art divorced with such-and-such a proviso"—once the condition has been fulfilled, she is divorced retroactively from the time the get was given into her hand.

He can therefore neither void the get nor add to his stipulation once the get has reached her hand. If it is lost or burned—even if the husband dies before the condition is fulfilled—she may

fulfill the condition after his death, and is then considered divorced as of the time the get was delivered into her hand. She may moreover remarry at the outset, even though the condition has not yet been fulfilled, and there need be no apprehension that the condition may not be fulfilled, since the stipulation was modified by the term "as of now" or "with the proviso."

2. Anyone who divorces his wife conditionally—whether he says, "as of now," or "if this proviso comes to pass, thou art divorced; if it does not come to pass, thou art not divorced"—should not seclude himself with her so long as the condition has not been fulfilled, unless a witness is present. Even a slave or a bondswoman may serve as a witness, but not her own bondswoman or small son, because she would not be ashamed to engage in sexual intercourse in their presence. And it is a well known rule that if he secludes himself with her in the simultaneous presence of two witnesses, she is doubtfully divorced, even if the condition is subsequently fulfilled, for he may have had intercourse with her, thus rendering the get null and void, as shall be explained later on in these rules.

3. How does one execute a conditional divorce? He may not say, "Write a get for my wife, with this condition attached," or, "Write a get and give it to her, with such-and-such a condition attached"; nor, needless to say, may he write in the get itself, "So-and-so has divorced So-and-so on this condition." How, then, should he proceed? He should tell the scribe to write and the two witnesses to sign, and they should write a valid get without any conditions whatsoever. Thereupon he should give her the get and say to her, "Behold, this is thy get," or "Behold, thou art divorced with this get, on such-and-such a condition." Or he should say to them or to his agent, "Give her this get, on such-and-such a condition."

4. If one writes the condition into the get after having finished writing the particular part of the get, the get is valid, whether the condition precedes or follows the witnesses' signatures.

If, however, the condition is written in prior to the writing of the particular part of the get, the divorce is of doubtful validity, even if the condition consists of the mere statement "with such-and-such a proviso," inasmuch as this leaves him some rights in the body of the get.

Similarly, if he makes a verbal stipulation before writing the particular part of the get, the divorce is of doubtful validity.

5. If a man divorces his wife with an attached condition, whether in writing, following the particular part of the get, or orally, after the particular part had been written, by saying to her, "Behold, thou art permitted to all men, save So-and-so" or "but So-and-so," and gives her the get on this condition, the rule is as follows: If the man excepted is a heathen or a slave, or is forbidden to her because of consanguinity, as for example, her father, or her brother, or his father, or his brother, the get is valid.

If, however, this excepted man is one of those whose betrothal to her would be valid, even if he is forbidden to her by a negative commandment, or is a minor, there is no get, because the husband has retained some rights in the get, which therefore does not effect a complete severance.

If the excepted man is her sister's husband, who, though forbidden to her now because of consanguinity, would become permitted to her if her sister should die, she is doubtfully divorced.

6. If he says to her, "Behold, thou art permitted to all men, save him that is to be born and is not yet in existence"; or "save thy harlotries," that is to say, "Thou mayest wed any man, but as for harlotry, behold, thou art to remain under the interdict of a married woman"; or "Behold, thou art permitted to anyone that shall come in unto thee after the manner of all the earth, but as for a manner that is not naturally thine, thou art to remain forbidden"; or "Behold, thou art permitted to any man, save him that shall betroth thee with a deed," that is to say, she is permitted to contract betrothal by way of money or intercourse, but as for betrothal by deed, she is to remain forbidden as a married

woman; or "Behold, thou art permitted to any man, save for the release of thy vows," that is to say, "No marital rights are to be left for me, except the right to release thy vows," meaning, "You are still to be my wife in respect to the releasing of vows," or "in respect to the right to eat of heave offering," or "in regard to inheritance," signifying that if she should die he is to be her heir—in each of these instances she is doubtfully divorced.

7. If he says to her, "Behold, thou art permitted to any man, save Reuben and Simeon," and later on says to her contrariwise, "Behold, thou art permitted to Reuben and Simeon," she is divorced, seeing that he has voided the condition, having now permitted to her the men whom he had previously excluded by stipulation.

8. If he says to her later on, "Behold, thou art permitted to Reuben," she is not divorced, seeing that he has not voided the stipulation affecting Simeon.

If he subsequently says to her, "Behold, thou art permitted to Simeon," or "Behold, thou art permitted to Simeon also," the divorce is in doubt—perchance he has permitted her only to Simeon, while Reuben remains forbidden, so that the phrase "to Simeon also" is meant to signify, "to all men, and also to Simeon"; on the other hand, perhaps he has permitted her to everyone, so that the phrase "to Simeon also" is meant to apply to Reuben as well, seeing that in the previous stipulation Simeon was mentioned next to Reuben.

9. If he stipulates for her by saying, "Today thou art not my wife, but tomorrow thou wilt again be my wife," she is not divorced, even though for today he has indeed made a complete severance between himself and her. For this reason we write in the get, "From this day on and forevermore."

10. If he says to her, "Behold, this is thy get, provided that thou drinkest no wine all the days of thy life," it is not a valid get, because it does not effect a complete severance.

If he says, "all the days of my life," or "all the days of the

life of So-and-so," it is a valid get, because he has in fact made a complete severance between himself and her, seeing that he will have no authority over her even after So-and-so's death.

11. If he says to her, "Behold, this is thy get, provided that thou dost not visit thy father for thirty days," it is a valid get. If he says, "that thou dost not visit thy father ever," there is no get, because this not a complete severance.

Therefore, if he says, "This is thy get, provided that thou art to eat no meat forever after," or "drink no wine forever after," there is no get, because this is not a complete severance. If, however, he says, "for thirty days," it is a valid get.

12. If he says to her, "Behold, this is thy get, provided that thou dost not marry So-and-so," there is no get. To what may this case be compared? To the case of one who says to her, "Behold, this is thy get, provided that thou drinkest no wine forever after," or "dost not visit thy father ever," or "all the days of thy life." If, however, he says to her, "provided that thou dost not marry So-and-so for fifty years," it is a valid get, and she may not marry him for the stipulated length of time. If she does marry him nevertheless, the get is retroactively null and void. If she engages in harlotry with that man, the resulting child is legitimate, and the get is valid, because the stipulation was stated to apply to marriage only.

13. If a man says to his wife, "Behold, this is thy get, provided that thou dost marry So-and-so," it is a valid get if she does marry him, as is the case with all other stipulations. The Sages, however, have said that she should not marry him or anyone else. She should not marry him, lest people should say, "They gave their wives to one another as gifts." Nor should she marry anyone else, because the get becomes valid only after the stipulation has been fulfilled.

If she transgresses and does marry that individual, she need not leave him. If she marries someone else before marrying this individual, the get is null and void, and she must leave the

latter. The child of such a marriage is a bastard, and she requires a get from the second husband.

14. If he says to her, "Behold, this is thy get, but the paper thereof is to remain mine," she is not divorced, because this is not a complete severance. If he says, "provided that thou givest me the paper," it is a valid get, and she must give it back to him.

15. If he engraves the get on a plate of gold and gives it to her, saying, "Behold, this is thy get and thy kĕṯubbah," it is a valid get, and at the same time her kĕṯubbah is regarded as having been received, provided that the plate is worth the amount stated in her kĕṯubbah. If it is not, he must pay the balance of her kĕṯubbah.

16. If anyone divorces his wife with a stipulation that invalidates the get, as for example, that she is not to eat meat or drink wine all the days of her life, or that she is to be permitted to all men except So-and-so, or if he makes any other stipulation before the writing of the particular part of the get, the rule is as follows: If the condition had been written in the get, and he then erased it and gave the get to her, she is doubtfully divorced; if the stipulation was oral, he must take the get back from her, and give it to her again without any stipulation at all, or with a valid stipulation.

17. How so? If he gives a get to his wife and says to her, "Behold, thou art divorced with this, and art permitted to all men save So-and-so," the rule is that if he then takes the get back from her and gives it to her again, saying, "Thou art permitted to all men," or "This is thy get," she is validly divorced. The same applies to all similar cases.

18. If a man gives a get to his wife with the stipulation that she is to pay him two hundred zuz, and then goes back and adds another stipulation in the presence of witnesses, to the effect that she is to attend his father for two years, his latter words do not invalidate his former ones; rather, it is the same as if he had said to her, "Thou art to fulfill one of these two conditions." She

may attend his father, or she may pay the money, whichever she prefers.

One of the first set of witnesses may not be joined with one of the second set.

If, however, he stipulates that she is to pay him two hundred zuz, and then goes back and stipulates in the presence of two witnesses that she is to pay him three hundred, he has thereby voided the stipulation of two hundred zuz, and she must pay him three hundred. The same applies to all similar cases.

19. If he stipulates to her that she is to perform the aforementioned task without specifying a time limit, it is the same as if he had specified one day, inasmuch as he did not state explicitly how long she is to perform it.

How so? If he says to her, "This is thy get, provided that thou art to do work for me," or "that thou art to attend my father," or "that thou art to nurse my child," the rule is as follows: If she works for him or attends his father for one day, or if she nurses his child for one day within the child's nursing period, meaning within the first twenty-four months, the get is valid. If his child or his father dies before she has done the nursing or attending, there is no get.

20. If he says to her, "provided that thou art to nurse my child or attend my father for two years," she must complete the specified length of time. If the child or the father dies within the stipulated time, or if the father says, "I do not wish her to attend me," there is no get, because the condition has not been fulfilled. The same applies to all similar cases.

21. If he says to her, "Behold, this is thy get, provided that thou art to pay me two hundred zuz between now and thirty days hence," the rule is as follows: If she pays it to him with his consent within the thirty days, she is divorced; if after the thirty days, she is not divorced.

If she pays it to him against his will, while he refuses to accept it, the get is defective, until she pays it to him with his consent.

If within the thirty days he changes his mind and says to her, "The two hundred zuz are forgiven thee," she is not divorced, since the condition has not been fulfilled.

If he dies within the thirty days, before she has made payment, she is not divorced.

22. If he says to her, "This is thy get, provided that thou art to pay me two hundred zuz," without specifying a time limit, and then dies before payment is made by her, she may not make payment to his heirs, because his stipulation called for payment to him only. The get, however, is not void, since he had not set a time limit. Therefore, even if the get is lost or torn before his death, she may not marry anyone other than her levir, until ḥălişah has been performed.

23. If he says to her, "Behold, this is thy get, provided that thou art to give me such-and-such a utensil," or "such-and-such a garment," and that utensil or garment is lost or stolen, there is no get, even if she pays him a thousand zuz in lieu of it; she must give him that same utensil or that same garment, unless he cancels the condition.

24. If a woman has been conditionally divorced, and another man betrothes her before the condition has been fulfilled, the rule is as follows: If the condition is subsequently fulfilled, she is betrothed. If the condition is not fulfilled, so that the get becomes null and void, she requires no get from the second husband, inasmuch as she was not subject to betrothal.

If, however, she had remarried, and the condition has not been fulfilled, so that the get became void, she requires a get from the second husband, as we have explained.

CHAPTER IX

1. If a man divorces his wife as of a certain time hence, the divorce becomes effective when the appointed time arrives. Such a divorce is therefore both similar and dissimilar to a conditional

divorce. It is similar, because like a conditional divorce, it becomes effective when the appointed time arrives; and it is dissimilar, because unlike a conditional divorce, which becomes effective immediately, this divorce is ineffective until the arrival of the appointed time.

Therefore, whereas in a conditional divorce both the positive and the negative alternatives of the condition must be declared, in this case neither that rule nor the other aforementioned rules concerning conditions apply.

2. How so? If a man says to his wife, "Here is thy get, but thou art not to be divorced thereby until thirty days hence," she becomes divorced only after the thirty days have elapsed.

If the husband dies or the get is lost or burned within the thirty days, the woman is not divorced.

3. If the woman deposits the get by the side of a public domain, and it is stolen or lost therefrom after the thirty days had passed, she is divorced, inasmuch as the get was extant on the day it became effective, and she had selected for it a repository that is not a public domain, since the sides of a public domain do not have the same status as the public domain itself.

4. Similarly, if a man makes the get contingent upon the performance of a certain act, the divorce is subject to the same rule as a postdated divorce.

How so? If a man says to his wife, "Here is thy get, but thou art not to be divorced thereby until thou payest me two hundred zuz," she is divorced after she has made the payment. The positive and negative alternatives of the stipulation need not be declared, nor do the other aforementioned rules concerning conditions apply, inasmuch as this is not a conditional divorce but rather no divorce as yet, since it has been made dependent upon the performance of a certain act, and only thereafter is the divorce to become a fact.

5. What, then, is the difference between a conditional divorce and a postdated divorce or a divorce contingent upon the performance of a certain act?

The difference is as follows: A conditional divorce becomes valid immediately, but is not consummated until the condition is fulfilled. Therefore, once the condition is fulfilled, the woman is divorced, so long as the get is extant, even if it is not in her possession, and she need not take delivery of it anew or have it in her possession after the condition has been fulfilled, inasmuch as the get had reached her at the outset as an instrument of divorce. And if she remarries before the fulfillment of the condition, she need not leave her second husband, as we have explained.

On the other hand, in the case of a postdated divorce or a divorce contingent upon the performance of a certain act, the get reaches the woman not as an instrument of divorce, but rather as a bailment, to remain in her custody until the arrival of the appointed time or the performance of the appointed act. Therefore, when that time arrives, the get, in order to become valid, must be in her possession, or she must take delivery of it anew, or it must be in a place selected by her for deposit, even if that place is not her own private domain, as we have explained, and only then does she become divorced thereby.

If she remarries before the arrival of the appointed time or before the performance of the appointed act, she must leave her second husband, and the child born of this marriage is a bastard, because she is still fully married to her first husband, and no divorce whatsoever had taken place as far as she is concerned.

6. If a man gives a get to his wife and says to her, "If you do not pay me two hundred zuz, this is no get," or "you are not divorced," he has not divorced her at all, and there is no get, either conditional or contingent upon the performance of an act. The same applies to all similar cases.

7. If a man wishes to divorce his wife conditionally, but with the sense of the condition being that the divorce is not to become valid until a certain time in the future, he must express this sense in the form of a stipulation contingent upon his return or his failure to return by a certain time.

How so? For example, he should say to his wife, "If I do not

return within thirty days hence, this get is to become valid; if I do return within these thirty days, this get is to be invalid," and with that he should hand her the get. Or he should say to her, "Here is your get, on condition that I do not return to this province within thirty days."

The same applies to all similar cases.

8. If a man stipulates that the get is to become valid if he fails to return to this province within thirty days, and if while on his return journey within the thirty days he falls ill, or is detained by a river, and as a result arrives after the thirty days, the get is valid, even if he stands up and shouts, "I was the victim of duress," for there is no duress in divorce, and it matters not that he now makes it clear that he is not of a mind to divorce his wife.

9. If a man stipulates to his wife that she is to be divorced as soon as he shall have kept away from her presence for thirty days, but keeps going back and forth, although without secluding himself with her, as soon as he has kept away from her presence for thirty days, she is divorced, for although he has kept going back and forth during the thirty days, it is a valid divorce, inasmuch as he did not seclude himself with her.

When does this apply? If he stipulates further by saying, "She is to be believed, as far as I am concerned, when she says that I had not made up with her." If he does not so stipulate, there is cause for apprehension that he may have made up with her while he was going back and forth, and that as a result she forgave him and he in turn annulled the divorce. Because of this apprehension the divorce, after the thirty days have passed, becomes defective.

Similarly, if a man says to his wife, "Here is your get, to become effective after twelve months," but remains in the same locality with her, there is ground for apprehension that he may have made up with her, unless he stipulates further by saying, "She is to be believed, as far as I am concerned, that I did not make up with her."

10. The same applies to all conditions that depend upon the woman's will, where she may, if she so desires, forgive her hus-

band and thus render the get null and void—apprehension arises that he may have made up with her, unless he stipulates, "She is to be believed, as far as I am concerned."

When does this apply? When the woman is divorced after marriage, since the husband is then on terms of intimacy with her. When, however, she is divorced after betrothal, there is no cause for apprehension that he may have made up with her.

11. If a man says to his wife, "Here is your get, to become effective if I do not return within twelve months," no apprehension need be felt that he may have returned clandestinely, because it is not the custom of people to return in secret. Hence, once the specified time has elapsed, and he has not returned, she is divorced.

If the man dies within the twelve months, the rule is that although there is no possibility of his return, and she is therefore surely divorced, nevertheless, if she is subject to levirate marriage, she may not remarry until the twelve months have passed, and the condition has thus been fulfilled.

12. If a man in sound health stipulates, "This get is to become valid if I die," or if a sick person stipulates, "This get is to become valid if I die of this disease," his words have no effect, because the meaning of "If I die" is ambiguous: it may mean that the divorce is to become effective as of the moment of his death, or it may mean that it is to become effective retroactively as of now.

Therefore, if he says, "If I die," without further qualification, it is accounted the same as if he had said, "after my death," and is therefore of no effect, because there is no get after death.

13. If a man says to his wife, "Here is your get, to become effective as of now, if I die," or "as of today, if I die," the get is valid, and when he dies his wife is divorced retroactively.

14. If a man says to his wife, "Here is your get, to become effective as of now," or "as of today, after I die," she is doubtfully divorced, since there is ground for apprehension that after saying, "As of now," he may have changed his mind from that

term to the subsequent term, "after I die," in which case the rule "There is no get after death" would apply.

15. If a man says to his wife, "Here is your get, to become effective when the sun comes out of its sheath," and then dies while it is yet night, there is no get.

If he says, "On condition that the sun is shining," and then dies while it is yet night, she is divorced, for once the sun has arisen, the condition has been fulfilled.

If he stipulates, saying, "If the sun is shining, there shall be a get; if the sun is not shining, there shall be no get," and then dies while it is yet night, there is no get, inasmuch as the condition was not fulfilled before his death, and there is no get after death.

16. If a critically ill person writes a get for his wife and divorces her therewith, and then recovers from his illness, he may not retract it, because in this respect his get is not analogous to his gift. For to say, "Let him retract the get," may give rise to the erroneous assumption that his get effects a divorce after his death, just as the beneficiary of his gift acquires title to it after the donor's death.

17. If a man says to his wife, "Here is your get, to become effective as of today, if I die of this sickness," and thereupon a house collapses over him, or a snake stings him, or a lion mangles him, or something similar happens to him, and he dies as a result of it, there is no get.

18. If he says to his wife, "Here is your get, to become effective if I do not recover from this sickness," and thereupon a house collapses over him, or a snake stings him, or a lion mangles him, the wife is doubtfully divorced.

If he says, "Here is your get, to become effective as of now, if I die of this sickness," and he thereupon recovers and walks in the street, but then falls ill again and dies, the rule is as follows: If the likelihood is that his death was due to the first sickness, the get is valid; if not, it is not valid.

If he passes directly from the one illness to the other, without recovering sufficiently to walk in the street, the get is valid, and no estimate of the likely cause of death is necessary.

19. In all these conditional divorces, the woman has the status of a complete divorcée during the whole time between the issuance of the get and the man's death, which marks the fulfillment of the condition, provided that she does not seclude herself with him, as we have explained.

20. If a sick man wishes to issue a get for his wife on the condition that if he should die, she is to be divorced, and thus exempt from levirate marriage, and if he should recover, there should be no divorce at all, but does not want to divorce her with the formula "as of now," lest it distress his mind, he should proceed as follows: Having written down the particular part of the get, he should write, or say, at the delivery of the get, "If I do not die, there shall be no get; if I do die, the get shall be valid; and if I do not die, there shall be no get."

This formula satisfies the requirement that both the positive and the negative alternatives of the condition should be declared, that the positive should precede the negative, and that he should not tempt fate by opening his declaration with the mention of evil. If he then dies, the woman is divorced at his death, provided that the get reaches her hand before it.

21. If the husband says to another man, "Take possession of this get for my wife, so that she would not become subject to levirate marriage upon my death," hands the get to him, and dies before the get reaches his wife, she is doubtfully divorced. For it is advantageous to most women to be exempt from levirate marriage; hence she is doubtfully divorced, even though the get had not yet reached her hand, seeing that another person has taken hold of it in her behalf.

22. If a man says to the witnesses, "Write a get for my wife twelve months hence," or "Write and deliver a get to my wife

twelve months hence," the witnesses may write the get and deliver it to her after the specified time.

If they write it within the specified time, there is no get, even if they deliver it after the specified time.

If they write it after the time specified by the husband, but he dies before the get is delivered to her, there is no get.

If it is not known whether the death had preceded the delivery or whether the delivery had preceded the death, the wife is doubtfully divorced.

23. If he says to the witnesses, "Write and deliver a get to my wife a septennate hence," they must wait until the eighth year before writing it.

If he says to them, "a year hence," they may not write it until the first month of the second year.

If he says to them, "a month hence," they may not write it until the first week of the second month.

If he says to them, "a week hence," they may not write it until the week is past, up to the end of the following Tuesday.

If he says to them, "Write and deliver it to her before the Sabbath," they may write it between Wednesday and the end of Friday, and then deliver it to her.

24. If they delay past the specified time, and thereupon write and deliver the get to her, as for example, if the husband had told them "a month hence," and they write and deliver it in the second week of the second month, the get is defective.

25. If the husband secludes himself with his wife after having told the witnesses to write the get, sign it, and deliver it, they may not write it at all. The reasoning here is *a minori ad majus:* If a get already delivered to a woman becomes defective in case her husband secludes himself with her, because of apprehension that he may have had intercourse with her, how much more so a get that has not yet been written.

If they nevertheless write it and deliver it to her after he had secluded himself with her, there is no get.

26. If a man says to ten persons, "Write a get for my wife," one of the ten may write it in behalf of all of them.

If he says, "Write it, all of you," one of them may write it, but only in the presence of all of them.

If he says, "Convey this get to my wife," one of them may convey it in behalf of all of them.

If he says, "Convey this get to my wife, all of you," one of them may convey it, but only in the presence of all of them.

27. If a man says to ten persons, "Write a get for my wife, sign it, and deliver it to her," one of them may write it, two may sign it, and one may deliver it to her. Even if the writer acts also as one of the signatory witnesses and as the conveyor of it to the wife, it is valid.

If he says, "Sign it, all of you," they all must sign it. If he enumerates them individually, whether he enumerates all of them or only some of them, and tells them to sign, it is the same as if he had said to them, "Sign it, all of you."

Of the signers, the first two are counted as witnesses, while the rest must sign in fulfillment of the condition. Therefore, if the rest are disqualified as witnesses, or if some of them sign the document today and the others the next day, or even many days later, the get is valid. If one of them dies before the signing, the get is null and void.

If one of the first two signers is disqualified as a witness, the get is defective, lest people should say that in other documents also a disqualified person is eligible as a witness when a large number of witnesses is involved. The reason why this was permitted in a get attested by a large number of witnesses is that there the decisive witnesses are those who attest its delivery.

28. The Sages have enacted that a man who instructs several persons to write a get, or sign it, or deliver it to his wife, should say to them, if he wants them to write it, "Let any one of you write a get for my wife," and if he wants them to convey it, "Let any one of you convey it." But if he wants them to sign it,

he should say, "Let any pair of you sign this get and deliver it to my wife."

29. Why did the Sages require that the witnesses to a get sign it in each other's presence? As a precaution, lest the husband should say to several persons, "Sign it, all of you." Should we say, "Let the witnesses sign in each other's absence," it might happen that after two witnesses have signed it, the woman might think that all the necessary witnesses have signed it and take the get into her hand, and yet the husband's stipulation would in fact not yet have been fulfilled.

30. If a man says to three persons, "Let two of you write a get for my wife, sign it, and give it to her," and among these three two are father and son, the get is valid if the father or the son signs it together with the third person, inasmuch as one may appoint a son as one's agent in place of his father.

31. If a man says to two persons, "Write a get, sign it, and give it to So-and-so to convey to my wife," or "give it to an agent to convey to her," the rule is as follows: One of them may write it, and both may sign it and give it to the agent. If they themselves convey it and give it to her, there is no get, because the husband did not appoint them agents for the delivery of the divorce.

What, then, should they do? They should take the get back from her, and give it to an agent, who in turn should give it once more to her in their presence, or in the presence of other witnesses.

My teachers, because of an error in their copies of the Talmud, rendered a decision concerning such a get which does not seem reasonable.

32. If a man says to a scribe, "Write a get for my wife," and the scribe writes it and gives it to the husband without witnesses; and if then the husband takes it and gives it to an agent, saying, "Give this get to my wife in the presence of witnesses," and if

thereupon the agent goes forth and gives it to her in the presence of witnesses, the woman is doubtfully divorced. For the principle that an agent is to be believed when he claims that a married woman has been duly divorced, even if he is the sole witness to it, is valid only when there is the supporting evidence of the witnesses who have signed the get, whose testimony is considered certified by the court, unless someone protests it, as we have explained. If, however, there are two witnesses there who testify that the husband had given this get to the agent in order to divorce his wife therewith, she is validly divorced.

33. If a man says to an agent, "Give this get to my wife in such-and-such a place," and the agent gives it to her in another place, there is no get.

If the husband says, "Give this get to my wife, who is in such-and-such a place," and the agent gives it to her in another place, the get is valid, because the husband had merely indicated his wife's whereabouts.

If the husband says, "Give it to her only in the house," and the agent gives it to her in the upper story; or if the husband says, "Give it to her with the right hand," and the agent does so with his left hand; or if he says, "Give it to her on a certain day," and the agent does so within that whole time, there is no get. If he says to the agent, "Do not give it to her except on such-and-such a day," and the agent gives it to her before or after that day, there is no get, since the husband had emphasized that it should be given on that particular day. The same applies to all similar cases.

34. Similarly, if a woman says to her agent, "Take delivery of my get at such-and-such a place," and he takes it in another place, there is no get.

If she says, "Bring me my get to such-and-such a place," and the agent brings it to another place, the get is valid.

35. If a man says to his agent, "Convey this get to my wife"—whether he says "convey" or "you are to convey"—and the agent

falls ill or becomes the victim of duress, the latter may appoint another agent to deliver the get.

If the husband says to the agent, "Take from my wife such-and-such an article, and give her this get," the latter may not appoint another agent to act in his stead. But if he does appoint him, and if the woman comes forth to meet the other agent and gives him the specified object first, and he then hands her the get, she is divorced.

36. If, however, the agent—even the first agent—gives her the get first, and she then gives him the article, there is no get, because he has transgressed against the husband's instructions in a matter concerning which people are ordinarily particular; for the husband had told him to take the article first, and then give her the get, and he proceeded in reverse order.

37. If the husband says to the agent, "Give my wife the get, and take from her such-and-such an article," the agent may not entrust his mission to another person, because the husband is presumed not to wish to have his bailment handled by someone else. If the agent does commission another party, then, whether the woman hands the article to the agent before she receives the get or vice-versa, the get is valid.

38. If the husband gives the get to the agent and says, "No one but you is to give the get to my wife," and the agent nevertheless gives it to a third party who delivers it to her, there is no get.

Similarly, if the husband says to the agent, "Do not you, yourself, give it to her; rather, give it to So-and-so, and let him deliver it to her," and if the agent himself gives it to her, there is no get, because the husband did not appoint him agent for the divorce itself.

39. If the husband gives the get to the agent and says to him "Convey this get to my wife," and the agent replies, "I do not know her by sight," and if the husband then says to him, "Give it to So-and-so, who does know her by sight," the first agent is not commissioned to effect the divorce, and therefore must do

no more than deliver the get to the second person designated by the husband; and it is the second agent who is authorized to effect the divorce. The latter may convey it to the wife himself, or have it delivered through a third person, if he falls ill or is the victim of duress.

40. If the husband gives the get to an agent, saying, "Do not give it to my wife until after thirty days," and if the agent falls ill or is the victim of duress within these thirty days, he may appoint another agent to deliver the get. For though he himself is not now authorized to effect the divorce, he may nevertheless appoint another agent within these thirty days, seeing that after the expiration of them he will become authorized to effect the divorce.

41. When does this apply? When the wife does not reside in the same locality with her husband, or is being divorced after espousal. If she is being divorced after marriage, and her husband resides in the some locality with her, there is ground for apprehension that he may have made up with her.

The first agent may not therefore appoint another agent within the thirty days, unless the husband declares, "My wife is to be believed, as far as I am concerned, that I did not make up with her in the meantime." The first agent may give the get to her only after the expiration of the thirty days, and the same apprehension remains in force until the husband makes the aforementioned declaration, as we have explained.

CHAPTER X

1. Wherever in this work we have used the expression, "the get is null and void," or "there is no get," or "the woman is not divorced," the meaning is that the get is null and void on the authority of the Torah, and the woman is still regarded as completely married. Therefore, if she remarries, she must leave her second husband, and the child born of such a marriage is a bastard.

If her first husband is a priest, she does not in such a case become forbidden to him as a divorcée. An exception to this rule is a man who says to his wife, "Behold, thou art divorced from me, but art not permitted to everyone"—although in this case there is no get, the woman nevertheless becomes ineligible for the priesthood on the authority of the Sages, for it is said, *Neither shall they take a woman divorced from her husband* (Lev. 21:17), which was interpreted by the Sages to mean that even if the woman was merely divorced from her husband, without at the same time becoming permitted to everyone, she nevertheless becomes forbidden for the priesthood.

This kind of divorce is referred to as "the mere odor of a get," and is sufficient to disqualify a woman for the priesthood on the authority of the Sages.

2. And wherever in this work we have said that the get is defective, the meaning is that it is defective solely on the authority of the Scribes, but the woman is ineligible for the priesthood on the authority of the Torah. Such a woman should not remarry at the outset, but if she does so nevertheless, she need not leave her second husband, and the child born of that marriage is legitimate. Another, valid, get should be written for her and given to her the while she is under her second husband. If it is impossible to write a second get for her, and the second husband, being a pious man, voluntarily divorces her, that is a praiseworthy act on his part, provided there are no children of this marriage. If there are children, however, he should not divorce her merely because of the defective nature of the get, lest he should cast reflection upon the legitimacy of his children.

3. Wherever in this work we have said, "this divorce is doubtful" or "the woman is doubtfully divorced," she may not remarry. If she does so nevertheless, she must leave her second husband, and the legitimacy of the child of that marriage is in doubt, because the mother has the status of a woman of forbidden degree, out of doubt.

If a man divorces his wife with a defective get, or if the

validity of the woman's divorce is in doubt, and he wishes to take her back, she is permitted to him, and he need not effect a new marriage, pronounce the seven benedictions, and write a kĕṯubbah, unless the woman had been completely divorced.

4. Any woman who remarries on the basis of a geṭ that is null and void requires a geṭ from her second husband, but only on the authority of the Sages, lest people should say that a married woman may leave her husband without a geṭ, and she requires also a geṭ from her first husband, in order to become permitted to other men. She is at the same time forbidden forever to both of these husbands, even though she had married the second one by error, lest people should say, "This man has taken back his divorced wife after she had been married to another man." If one of these two men transgresses and does remarry her, he must dismiss her.

5. The same rule applies to a woman who has remarried after witnesses had testified that her first husband was dead, and he then returns. Whether her first husband is normal or a deaf-mute, whether her second husband is normal or a deaf-mute, whose act of marriage is not completely valid—she must leave them both, must obtain a geṭ from each one of them, and is forbidden to both of them forever.

6. If when the first husband returns, this woman is only betrothed to the second husband, or if the geṭ is found to be null and void, she is permitted to her first husband and does not require a geṭ from her second husband, because marriage cannot apply to a woman of forbidden degree.

Nor is there ground for apprehension that people might say, "A married woman may leave her husband without a geṭ," because inasmuch as her marriage has not yet been consummated, people could say no more than that the marriage was subject to a condition which has not been fulfilled.

7. If after a divorced woman has remarried, the geṭ is found to be null and void, or her first husband, reported to her to have

died, returns alive, neither the first nor the second husband has any title to anything that she may find or to her earnings, nor has he the power to annul her vows. All the usufruct enjoyed by either husband since her second marriage may not be reclaimed from them. She is not entitled to her kĕṯubbah, nor to the stipulations of her kĕṯubbah, nor to maintenance from either husband, and if she had received any of these from either of them, she must make restitution. Whatever of her possessions had deteriorated or perished, even if it is part of her iron sheep property, she may collect neither from her first nor from her second husband.

The child born from the second marriage has the status of a bastard. If her first husband has intercourse with her before she is divorced by her second husband, the child is likewise a bastard on the authority of the Sages. If the second husband divorces her and she receives her kĕṯubbah from him, and then her first husband returns alive, or the geṭ is found to be null and void, she need not be compelled to repay what she had received, either for her maintenance or for her kĕṯubbah.

8. The same rule applies to the case of two brothers, one of whom, having betrothed a woman, went abroad and was reported to have died, whereupon his brother contracted levirate marriage with the supposed widow, but then the first brother returned alive. In such a case she must leave both of them and receive a geṭ from each one, and all the aforementioned prescriptions are applicable to her.

This applies also to the case of a man who had betrothed a woman, and she then departed to another country, and was reported to have died, whereupon he married her sister, but then it became known that the first wife was not dead. In this case, too, both sisters must receive a geṭ from him, and the same regulations are applicable to them.

9. If, however, the marriage having been consummated, the wife had departed to another country and was reported to have died, whereupon the husband married her sister, and then the

first wife was found to be living, the sister requires no get from him, and the first wife is permitted to him.

The same applies to all marriages with women of forbidden degree contracted under the impression that they were of permitted degree, and later discovered to be of forbidden degree—no get is necessary for them, because betrothal has no effect upon a woman of forbidden degree.

10. Why then was a get made obligatory for the sister of the espoused wife? Lest people should say, "The espousal was conditional, and he married the sister of his espoused wife lawfully." Hence, once her sister is dismissed with a get, it necessarily follows that the first spouse is forbidden to him, in order that people should not say, "He married the sister of his divorced wife."

11. If the scribe writing the documents erroneously hands the get to the husband and the receipt to the wife, or if this same error is committed by husband and wife themselves, the former taking the get and the latter the receipt, under the impression that they are thus duly divorced; and if later on the get is found in the possession of the husband, the rule is as follows: If the woman has not yet remarried, she is not divorced, and since it is now common knowledge that she has not yet been divorced, the husband must give her the get in our presence, and she becomes divorced as of that date. If, however, she had already remarried, and the first husband then produces the get and says. "She has not yet been divorced, seeing that the get is in my hand, and has never reached her hand," no attention need be paid to him as far as prohibiting her to her second husband is concerned. Rather, the presumption is that she had been divorced, that the get was lost by her, that this man found it, and that he now comes forth for the sole purpose of rendering her forbidden to her second husband.

12. A man who divorces his wife because of her evil reputation, or because she is reckless in making vows, should be

instructed, "Let her know that you are divorcing her for that very reason, in order to punish her." He should be told further, "Be it known unto you that you may not take her back ever."

And why is a man who divorces such a wife forbidden to take her back ever? As a precaution, lest, having thereupon married another man, she should repent and live in chastity under him, whereat the first husband might say, "Had I known that this would happen, I would not have divorced her." This would make it appear as if he had divorced her conditionally, and the condition not having been fulfilled, the get would then become null and void retroactively. He should therefore be told, "Make up your mind to divorce her irrevocably, for she will never be permitted to come back to you." Nevertheless, should he transgress and take her back before she is betrothed to another man, he need not dismiss her.

13. Similarly, one who divorces his wife because she is barren, or is habitually subject to bleeding during sexual intercourse, may never take her back, lest, having married another man, the barren woman should then give birth, or the bleeding woman become cured, whereat the first husband might say, "Had I known that this would happen, I would not have divorced her," with the result that the divorce would become null and void, and the children born of the second marriage would have the status of bastards. Nevertheless, should he transgress and take her back, he need not dismiss her.

14. An agent who conveys a get outside the Land of Israel and declares, "It was written and signed in my presence," may not himself marry the divorcée, because of apprehension that he may have cast his eyes upon her and testified in her behalf with that end in view.

Similarly, the sole witness who testifies that a woman's husband had died and thus entitles her to remarry, may not himself marry her.

So, too, a Sage who has declared a woman forbidden to her husband because of her vow, may not himself marry her.

Thus also, a man accused of intimacy with a bondswoman who has been subsequently emancipated, or with a heathen woman who subsequently became a proselyte, may not marry her.

Similarly, a heathen or slave who had intercourse with a daughter of Israel, may not thereupon marry her, even if the heathen repents and becomes a proselyte, or the slave is emancipated.

Nevertheless, if any one of these men transgresses and marries the respective woman, he need not be compelled to dismiss her.

15. If, however, these men had been married when the aforementioned events transpired, and thereafter their wives died or were divorced, the divorce resulting from conflict initiated by the wife herself, the aforementioned women may at the outset marry the respective men.

Likewise, if the aforementioned women had gone forth and married other men, and were then widowed or divorced, they may at the outset marry the respective men.

16. In each case the woman may marry the son, or any other relative, of the witness who had testified for her, or of the Sage who had declared her forbidden to her husband, or of the man accused of intimacy with her, for no man sins in order that another man may benefit therefrom.

A woman may marry one of the witnesses to her divorce or her declaration of refusal, or one of the judges before whom she had performed ḥălişah, because the aforementioned apprehension applies only to a sole witness.

As a rule, one should avoid being a witness to a declaration of refusal; on the other hand, one should be eager to act as witness to ḥălişah.

17. If a man divorces his wife, and then, before she remarries, has intercourse with her before witnesses, the rule is that inasmuch as she was his wife, whether she was divorced after marriage or after espousal, the presumption is that he has

taken her back and has had intercourse with her for the purpose of betrothal, and not for the purpose of harlotry, even if he is seen paying her money. For it is presumed that no man would make his intercourse with his wife meretricious, seeing that it is within his power to make it licit. She is therefore presumed to have been assuredly betrothed to him again, and therefore requires a second get from him.

18. If he secludes himself with her in the presence of witnesses—provided that these witnesses see it simultaneously—and if she was divorced after marriage, there is cause for apprehension that she may have had intercourse with him, and the witnesses to their seclusion are at the same time regarded also as witnesses to their intercourse. For he who betrothes a woman by way of intercourse need not perform the act itself in the presence of the witnesses, but need only seclude himself with her in their presence, and may then have intercourse with her in privacy, as we have explained.

Hence she requires a second get, out of doubt, seeing that her second betrothal is likewise doubtful.

If, however, she was divorced after espousal, there is no cause for apprehension, since he is not yet on intimate terms with her.

19. Some of the Geonim have ruled that any woman who has intercourse before witnesses requires a get, on the presumption that no man would deliberately make his intercourse meretricious.

They then widened and extended this principle which occurred to their minds, by ruling that if a man has a son by his bondswoman, his childless wife is not subject to levirate marriage, because of the apprehension that he may have first emancipated the bondswoman and then had intercourse with her. There are also some who maintain further that the man must assuredly have first emancipated the bondswoman, since no man would deliberately make his intercourse meretricious.

All these rulings seem to me to be a far departure from the manner in which decisions should be rendered, and are not to be relied upon, because the Sages have limited the aforementioned presumption solely to a man and his divorced wife, or a man who had betrothed a woman conditionally and then had intercourse with her without further specification. In these cases the woman is definitely his wife, and only in the case of a wife does the presumption prevail that no man would deliberately make his intercourse meretricious, unless he specifically says so, or declares that his intercourse is conditional.

In the case of other women, however, the presumption is that intercourse with a harlot is meretricious, unless the man specifies that it is for the purpose of betrothal. Needless to say, in the case of a bondswoman or a heathen woman, who are not subject to betrothal, there is no need whatsoever for apprehension, and the son born of such women has the status of a heathen or a slave, until there is positive knowledge that his mother had been emancipated or had become a proselyte.

20. If a woman presumed to be married, either after marriage or after espousal, is reputed in the city to have been divorced, the rule is as follows: Even if reports of her divorce have spread through the greater part of the city or the whole of it, no apprehension need be felt concerning her, and she remains under the presumption of being still married.

If, however, she is reputed in the city to have been betrothed, and this is given credence by the court—in which case she has the status of a woman whose betrothal is of doubtful validity, as we have explained—and thereupon it is reported that she has been divorced after this betrothal, the report that had previously made her forbidden now makes her permitted, and she is considered divorced.

21. A man should not marry a woman with intention aforethought to divorce her, nor should she live with him and wait on him the while he has a mind to divorce her.

A man should not divorce his first wife unless he finds her guilty of misconduct, as it is said, *because he has found some unseemly thing in her* (Deut. 24:1).

It is not proper for a man to be hasty in divorcing his first wife. As for his second wife, if he finds cause to dislike her, he may send her away.

22. In the case of a woman who is wicked in her ways, and is not chaste like the virtuous daughters of Israel, it is a religious duty to divorce her, for it is said, *Cast out a scoffer, and contention will go out* (Prov. 22:10).

It is not proper for a virtuous man to marry a woman divorced for immorality, lest people should say, "This one dismissed a wicked woman from his house, and that one took her in."

23. A wife who has become a deaf-mute may be divorced by means of a get. If she has become an imbecile, however, she may not be divorced until she recovers.

This rule was enacted by the Sages in order to prevent licentious men from being free to have their way with her, seeing that she is unable to take care of herself. Her husband may therefore leave her and marry another woman, but must continue to provide food and drink for her out of her own possessions. He is not, however, obligated to provide her with food, raiment, and conjugal rights, for it is unbearable for a sane person to live in the same house with an insane person. Nor is he liable for the costs of her medical treatment or for her ransom.

If he divorces her nevertheless, the divorce is valid, and he may dismiss her from his house, nor is he thereafter obligated to take care of her once more.

CHAPTER XI

1. A man should not marry a minor female. If he does marry a minor orphan, and she does not want him for a husband, she

may declare her refusal and leave him, and does not require a get from him, because the betrothal of a minor female is not a complete betrothal, as we have explained.

Likewise, a minor female given in marriage by her father, who became a widow or was divorced while still a minor, is accounted the same as an orphan, even if her father is still living, and therefore, if she remarries while still a minor, she may declare her refusal.

2. The privilege of refusal was not extended to a deaf-mute woman, even though her marriage, like the marriage of a minor female, is based on Scribal authority, in order that people should not be loath to marry her.

3. A minor female may exercise the right of refusal either after espousal or after marriage, either in her husband's presence or in his absence.

Just as she may exercise this right against her husband, so may she exercise it against her levir. She may declare her refusal against her first husband, and also, if she remarries, against her second husband, her third husband, and so on, as many as there may be—so long as she is a minor, she may declare her refusal.

If a minor female, though married, had not declared her refusal, but went forth, while still a minor, and became betrothed to another man, her second betrothal is accounted as evidence of the refusal of her first husband.

4. Until what age may a girl exercise the right of refusal? So long as she is a minor, and until she becomes a maiden, or until it becomes known that she is barren.

When does this apply? When her husband had no intercourse with her after she had become twelve years and one day old. If her husband had intercourse with her after she had reached that age, she is not entitled to refusal, because intercourse is a valid instrument of marriage according to the Torah, as we have explained. Nor does she require an examination as to her puberty in order to determine whether she is entitled to the

right of refusal, because the presumption is that she already has the tokens of puberty.

5. If she is examined nevertheless, and no tokens of puberty are found, then inasmuch as she has had intercourse after reaching the age at which these tokens normally appear, there is ground for apprehension that the tokens may have in fact appeared, but dropped off, and she therefore requires a get, out of doubt.

If she declares her refusal after this examination, and is then betrothed to another man, she requires a get from the latter, out of this same doubt. If she marries this second man, she must leave both husbands, and the child born of either husband is regarded as a doubtful bastard.

6. A woman who had not declared her refusal while a minor, may not do so after reaching her majority, even if her husband had no intercourse with her after she had become twelve years and one day old, inasmuch as she had in fact reached her majority.

She requires a get on Scribal authority, for the following reason: Since her husband had no intercourse with her after she had reached maidenhood, there is no cause for apprehension that tokens of puberty may have appeared in her, in which case she would have been considered doubtfully betrothed, nor did he have intercourse with her after she had reached her majority, which would have made her a fully married woman. Consequently she requires a get only in order to release her from the marriage contracted in her minority, which is binding only on Scribal authority.

Therefore, if after reaching majority, she proceeds to betroth herself to another man, the second betrothal takes effect, and if she is divorced by her first husband, her second husband may consummate his marriage with her. But if the second husband divorces her, the first husband may not resume his marriage with her, lest people should say, "He has taken back his divorced wife after she had been espoused by another man."

If the second husband had had intercourse with her before the first husband granted her a divorce, she must leave both of them, because her case is similar to that of a woman who had heard that her husband was dead, and thereupon married another man, and then her husband came back. The child born of this second marriage is not considered a bastard. If, however, the first husband had had intercourse with her before the second husband granted her a divorce, the child is considered a bastard.

7. What are the qualifications of a minor female who requires a declaration of refusal? If she is between six and ten years of age, she must be examined as to the development of her mind: if she knows that she must take care of the token of her betrothal, that it is a token of betrothal, and that she must take care of it not as she would take care of a nut, a date, or the like, she requires a declaration of refusal. If she does not know enough to take care of the token of her betrothal, she needs no declaration of refusal, but may simply return to her mother's house, as if she had never been betrothed.

If she is less than six years old, she requires no declaration of refusal, even if she knows enough to take care of the token of her betrothal.

If she is more than ten years old, she must make a declaration of refusal, even if she is exceedingly unintelligent.

Any minor girl given into marriage without her consent by her brothers, her mother, or her other relatives, requires no declaration of refusal.

8. How is she to declare her refusal? She must say in the presence of two witnesses, "I do not wish to have So-and-so for my husband," or "I do not wish to accept the betrothal contracted for me by my mother or by my brothers," or make some similar statement.

Even if guests are reclining in her husband's house, and she, while standing by to serve them wine, says, "I do not wish to have So-and-so for my husband," this constitutes a declaration of refusal.

9. The two witnesses in whose presence she has declared her refusal must write for her as follows: "On such-and-such a day, So-and-so, the daughter of So-and-so, has declared before us her refusal of So-and-so, her husband," then sign the document and give it to her. This is the form of the bill of refusal.

The bill of refusal is unlike a get, which when handed over effects the divorce: it need not be written specifically for the girl concerned, it requires no formal delivery, and it is subject to none of the other regulations governing bills of divorcement.

The bill of refusal may not be written in the form of a get, lest it should seem to be a bill of divorcement, whereas it is merely similar to an act of the court.

10. The two witnesses in whose presence the girl declares her refusal must know both her and her husband whom she has refused.

Therefore, whosoever sees her and hears her declare her refusal may write for her a bill of refusal, even though he does not know her.

It has long become the custom in Israel to write a bill of refusal in the following form:

11. *BILL OF REFUSAL*

On such-and-such day of the week, such-and-such day of such-and-such month, in the year so-and-so according to such-and-such a reckoning, So-and-so, the daughter of So-and-so, has declared her refusal in our presence, and has spoken thus: "My mother," or "my brothers, have misled me, and have given me in marriage," or "have betrothed me, while I was a minor, to So-and-so, the son of So-and-so. And I now reveal before you my mind, that I do not want him and will not bide with him."

And we have examined So-and-so aforesaid, and it became clear unto us that she is yet a minor. And we have therefore written these presents, and have signed them, and have given them unto her, to serve as privilege and clear evidence.

So-and-so, the son of So-and-so, witness; So-and-so, the son of So-and-so, witness.

12. If a man divorces his wife, and she subsequently becomes betrothed to another man, she is forbidden to her first husband, even though the second husband had not yet had intercourse with her. If the first husband nevertheless takes her back and has intercourse with her, he is liable to a flogging, and must be compelled to dismiss her, for it is said, *her former husband, who sent her away, may not take her again to be his wife* (Deut. 24:4).

13. If she has played the harlot with another man while divorced, she may return to her husband, for it is said, *and she departeth out of his house, and goeth and becometh another man's wife* (*ibid.* 24:2), implying that it is her becoming another man's wife, i.e., her betrothal to him, which makes her forbidden to return to her first husband.

14. It follows from this general negative commandment that any woman who has played the harlot while under her husband is forbidden to him, and he is liable to a flogging on her account, as it is said, *after that she is defiled* (*ibid.* 24:4), and this woman has been so defiled, unless indeed she is the wife of an Israelite who became the victim of rape.

Therefore, any man who has intercourse with his wife after she had become forbidden to him on the ground of warning and seclusion, is liable to a flogging for disobedience.

If he transgresses and takes her back after having divorced her, he must dismiss her again with a get.

15. If a deaf-mute divorces his wife by way of gesture, as we have explained, and she goes forth and is betrothed to another deaf-mute, or, needless to say, to a normal man, she is forbidden to return to her first deaf-mute husband.

On the other hand, if the divorced wife of a normal man goes

forth and marries a deaf-mute, who in turn also divorces her, she may return to her first, normal, husband.

16. A girl who has refused her husband does not have the status of a divorcée, and her relationship to her former husband is the same as to a man who had never betrothed her. She is permitted to his relatives, and he is permitted to her relatives. Nor does he disqualify her from marrying a priest.

If she marries another man, and he divorces her, or dies, or is in turn refused by her, she is permitted to return to her first husband. Indeed, if her first husband divorces her, then takes her back, and is then refused by her; and if, after the refusal, she marries another man, who in turn divorces her, she may still return to her first husband. For a girl who leaves her husband by way of refusal, even if preceded by a get, is considered the same as if she had never been divorced from him by way of a get, and is permitted to return to him.

If, however, she is divorced by way of a get while yet a minor, and is then married to another man, but refuses him, she is forbidden to return to her first husband, for even though she left her second husband by way of refusal, she had left her first husband by way of a get. Needless to say, she may not return to her first husband if her second husband has likewise divorced her or has died.

And even if she left her second husband by way of refusal, she is likewise forbidden to marry her first husband's father, son, or brother, as is the rule for other divorcées.

17. A girl who refuses her levir is forbidden to his father, because at the time of his son's death she was seemingly his daughter-in-law. She may, however, marry the other relatives.

Therefore, if she refuses one of several levirs, she may marry any one of his other brothers.

18. A divorcée or a widow may not remarry or become betrothed without waiting ninety days, exclusive of the day of her divorce or of her husband's death, and exclusive of the day of

her espousal, in order to determine whether she is or is not pregnant, and in order to distinguish between the seed of the first husband and the seed of the second.

19. This interval is reckoned for the divorcée from the day the get is written, even if it was conditional, or did not reach her until several years afterwards; the count must run from the day of the writing, inasmuch as her husband may not be secluded with her from the moment the get is written.

20. The Sages have enacted that the following women must likewise wait ninety days: a woman physically incapable of bearing children—even if divorced or widowed after espousal—a minor, an aged woman, a sterile woman, a barren woman, a woman whose husband is beyond the sea, or in ill health, or confined in prison, and a virgin after espousal—all these must wait ninety days.

21. An emancipated bondswoman and a female proselyte must also wait ninety days. Even husband and wife who have become proselytes must be separated for ninety days, in order to distinguish between seed conceived in holiness and seed not conceived in holiness.

Similarly, "a woman of goodly form," required by the Torah to wait only thirty days in order to adjust herself, must also wait ninety days for the adjustment of the offspring, the thirty days being included in the ninety.

22. A girl who had refused her husband need not wait ninety days, these ninety days having been prescribed only for a divorcée.

Similarly, a woman who had played the harlot need not wait, because she is bound to have taken precautions against conception. So, too, a woman who has been raped or seduced need not do any waiting.

23. In the case of a woman married by error and separated by the court from her husband upon discovery that she is for-

bidden to him, if she is a minor incapable of giving birth, she need not wait ninety days, because such a case is uncommon, and enactments are not meant to apply to uncommon cases.

24. A man who espouses a woman within the ninety days must be placed under a ban, but if he espouses her and then flees, he need not be banned. If he consummates the marriage within the ninety days, he must be separated from her until the expiry of the prescribed time, whereupon he may bide with her.

25. The Sages have also enacted that a man should not marry another man's pregnant or nursing wife, even though it is known who had impregnated her, lest the child should be harmed during subsequent intercourse, since the child not being his, he will not take proper precautions; or, in the case of a nursing woman, lest her milk should spoil, since he will not take care to remedy the milk with such things as are helpful in such an event.

26. How long is the period of nursing? Twenty-four months, exclusive of the day of delivery and the day of the woman's subsequent espousal.

27. Just as it is forbidden to marry such a woman, so is it forbidden to espouse her until the expiry of this period of time, even if she has given her child to a wet nurse or has weaned it within the twenty-four months. If the child has died, however, she may remarry, and there need be no apprehension that she may have caused the child's death with that purpose in view.

28. If a man transgresses and marries a pregnant or nursing woman within this period of time, he must dismiss her with a get, even if he is a priest.

If he is an Israelite, he may take her back upon the termination of the twenty-four months prescribed for a nursing mother. If he marries her, then flees, and some time thereafter returns and bides with her, it no longer matters.

If a man espouses a pregnant or nursing woman, he need not

be compelled to dismiss her or consummate the marriage until after the period of nursing or until the child has died.

CHAPTER XII

1. If a woman comes forth and says, "I was married, but am now divorced," she is to be believed, for the mouth that forbids is the mouth that permits. If, however, while presumed to be married, she comes forth and says, "My husband divorced me," she is not to be believed as far as her freedom to remarry is concerned, but she does thereby make herself forever ineligible to marry a priest. If her husband dies, her declaration constitutes a valid ground for apprehension, and she is therefore subject to ḥălişah, but not to levirate marriage.

2. If she has two witnesses to testify that she is indeed a divorcée, she may at the outset remarry, even if she cannot produce a get.

If she produces a get and says, "My husband divorced me therewith," she is to be believed and may remarry on the strength of it, even if the document is not confirmed, as we have explained.

3. If the husband comes forth to challenge the validity of the document, by saying, "I did not give it to her; rather, I dropped it, and she found it," he is not to be believed, inasmuch as he has admitted that he had written it for her, and the document is now produced by her.

If, however, the husband says, "The divorce was conditional," or "The get was merely placed in her custody," or "I have never written it," or "It is forged," the document must be validated through its signatories or through the witnesses to delivery, as we have explained. If the document is not so validated, she is not divorced as far as her eligibility to remarry is concerned, but she has thereby disqualified herself from marrying a priest, as we have just explained, inasmuch as she, by her own admis-

sion, has disqualified herself and has made herself analogous to a cut of forbidden food.

4. If a woman and her husband come forth, the woman saying, "You divorced me, but my get was lost," and the husband replying, "I did not divorce you," she is to be believed, even though her status as a married woman is based on presumption. For the presumption is also that a woman would not act insolently to her husband's face.

5. If the husband says, "I have divorced my wife," he is not to be believed, but his statement constitutes a valid ground for apprehension, and the wife is therefore considered doubtfully divorced. Even if the wife admits that he had divorced her, he is still not to be believed—perchance his intention is to impair her status, or perhaps he had divorced her without her knowledge with a get that is null and void, or it may be that she is acting insolently towards him because he believes her and she is not aware of the gravity of her status as a married woman forbidden to marry anyone else.

The husband should therefore be told, "If this matter is true, well then, since both of you are here, divorce her now in our presence."

6. If two witnesses say, "She was divorced," and two others say, "She was not divorced," then, even if the husband is standing by, and she says to him, "You divorced me," she is nevertheless presumed to be a fully married woman, because in this case it is possible that she is acting insolently, inasmuch as she is supported by the two witnesses. Therefore, if she remarries, she must leave her second husband, and the child born of that marriage is considered a bastard.

7. When does this apply? When the witnesses say, "She was divorced just now," since in such a case she can be told, "If this matter is true, produce your get."

If, however, the witnesses say, "She was divorced a long time ago," it is possible to say that the get was lost. Therefore, since she says, "I am assuredly divorced," and two witnesses support

her, even though two other witnesses contradict them, if she marries one of her own witnesses, she need not leave him, seeing that both she and her second husband know of a certainty that she was permitted to remarry, and the presumption is that they would not impair their own status.

If, however, she marries any other man, who cannot have any certain knowledge of her true status, or if she herself says, "I do not know," and is then married, even to one of her own witnesses, she must leave her second husband, and the child born of that marriage is considered a doubtful bastard.

8. If two witnesses say, "We saw her being divorced," and two others say, "We did not see her," the rule is that if they are all residents of the same courtyard, she may not remarry; but if she does so, she need not leave her second husband, and the child born of this marriage is legitimate, because people are inclined to execute divorces in privacy.

9. If one witness comes forth and says concerning a woman presumed to be unmarried, "She had been married, but was divorced," and another witness comes forth and says, "She was not divorced," it follows that both witnesses testify in fact that she was married, but only one testifies that she was divorced, and the testimony of that one witness does not have the same weight as the testimony of the two witnesses. Therefore she may not remarry, and if she does so nevertheless, she must leave her second husband.

10. If one woman, A, and two men, B and C, arrive from another country, and B says, "A is my wife, and C is my slave," while C says, "A is my wife, and B is my slave," whereas A says, "Both B and C are my slaves," A is permitted to any man. For though both B and C claim that she is married, yet inasmuch as each one of them has testified to his own advantage, neither one is to be believed.

11. If a receiving agent produces a get, but the husband says, "It is forged," the get must be verified through its signatories or through the witnesses to delivery, as we have explained.

If the husband says, "I merely placed it in his custody," but the agent says, "He gave it to me for the purpose of effecting a divorce," the agent is to be believed.

Likewise, if the get is produced by the woman, and she says, "This agent gave it to me," and the agent supports her by saying, "Even so, I did give it to her, and her husband had given it to me for the purpose of divorce," but the husband says, "I gave it to him only to keep in his custody," the agent is to be believed, and the woman is validly divorced.

12. If the get is lost, the woman is a doubtful divorcée, even if the husband says, "I gave it to the agent for the purpose of divorce," and the agent says, "I delivered it to her," seeing that the woman was presumed to be married, and there is only one witness, though supported by the husband, to the contrary.

The same rule applies even if the woman herself says, "It was in my own presence that my husband gave the get to the agent for the purpose of divorce, and the agent in turn delivered the get to me," for seeing that both her husband and the agent support her, she may be acting brazenly and may in fact not have been divorced at all.

13. If a woman's receiving agent accepts a get in her behalf, and sends it on to her in the presence of two witnesses, and if the get reaches her hand and she takes hold of it, so that she can now produce it, although she does not know whether it was sent by her husband, or by her receiving agent, or by her husband's agent, she is divorced, as we have explained.

14. If the husband comes forth to challenge the validity of such a get with the claim that he did not write it, or that it is null and void, it must be verified through its signatories, inasmuch as witnesses are there to testify that the get given to her came from the hand of her own agent, which is equivalent to her own hand. Even though she herself does not know this, these witnesses do know it. If the get is not so verified, the woman is not validly divorced.

15. If a woman presumed to be married accompanies her husband on a voyage beyond the sea, and there is peace between them, as well as peace in the world at large; and if upon her return alone, she says, "My husband is dead," she is to be believed, and may remarry or contract a levirate marriage. For the presumption is that she would not impair her own status, render herself forbidden to both her first and her second husband, lose her right to her kĕṯubbah from either one of them, and cause her children to become bastards—all this in a matter that is bound to be revealed to everyone eventually. It is a matter in which neither denial nor argument is possible, and eventually, if her husband is still living, he will either come back, or it will become known that he is still among the living.

Likewise, if only one witness appears to testify for her that her husband is dead, she may remarry on the basis of that testimony, because the matter is bound to be revealed eventually. Even a slave, or a woman, or a bondswoman, or an indirect witness who had heard it from a direct witness, or from a slave, or from a bondswoman, or from his relatives, is to be believed when he says, "So-and-so is dead," and the latter's wife may remarry or contract levirate marriage on the basis of their testimony.

16. Everyone is eligible to offer such testimony for a woman, excepting five women who are presumed to dislike each other, and may not testify for each other concerning a husband's death, lest their aim should be to make her forbidden to him while he is yet living. They are the following: her mother-in-law, her mother-in-law's daughter, her co-wife, her sister-in-law, and her husband's daughter.

Even a heathen speaking in his innocence is to be believed, and a woman may remarry on the strength of his testimony, as we shall explain later on. If, however, it was his intention to offer testimony, he may not be believed.

17. Likewise, one who is disqualified as a witness by reason of a transgression against the Torah, is not to be believed if

he comes to testify for a woman that her husband is dead. If, however, he was speaking in his innocence, he is to be believed, seeing that he is no less worthy of credence than a heathen. If he is disqualified for transgressing against an enactment of the Sages, he is eligible to testify in matters concerning a woman's marital status.

18. If one witness comes forth and testifies that her husband is dead, and on the strength of his testimony she is permitted to remarry; and if then another witness comes forth to contradict the first witness, by saying, "He is not dead," the woman's status remains permissive, and she may still remarry. For the testimony of one witness as to a woman's marital status has the same weight as the testimony of two witnesses in other cases, and it cannot therefore be nullified by the testimony of only one contradictory witness, instead of the statutory two.

19. If these two witnesses come forth at the same time, one saying, "He is dead," and the other saying, "He is not dead," or if two women testify, one saying, "He is dead," and the other saying, "He is not dead," the woman involved may not remarry, and if she does remarry, she must leave her second husband, because her status is in doubt.

If she marries the witness who had testified for her, saying, "It appears clear to me that my first husband is dead," she need not leave her second husband.

If thereupon two witnesses come forth and say, "He is not dead," the wife, even if already remarried, must leave her second husband.

20. When does this apply? When the single witness on the strength of whose testimony she had remarried carries the same weight as the two who now contradict him; for instance, if she had remarried on the basis of one man's testimony, and then two men came forth and said, "He is not dead," or if she had remarried on the basis of the testimony of a woman, or of her own testimony, and then two women, or two witnesses ineligible

to testify on the authority of the Sages, came forth and said, "He is not dead."

If, however, a single qualified witness says, "He is dead," and several women or several ineligible witnesses say, "He is not dead," the opposing witnesses are considered evenly balanced, and therefore, if she then marries the one witness who had testified for her, saying, "I am certain that my first husband is dead," she need not leave her second husband.

21. If a female witness says, "He is dead," or if the wife herself says, "My husband is dead," and then a qualified witness comes forth and says, "He is not dead," the wife may not remarry. If she has done so already, she must leave her second husband.

22. If one woman says, "He is not dead," and two other women say, "He is dead," the wife may remarry.

Likewise, if ten women say, "He is not dead," and eleven other women say, "He is dead," the wife may remarry, because the principle that two witnesses are as good as a hundred applies only to qualified witnesses. In the case of disqualified witnesses, the majority prevails, whether on the side of leniency or on the side of stringency.

23. If two witnesses say, "He is dead," and two others say "He is not dead," the wife may not remarry; if she has remarried already, she must leave her second husband, because her status is in doubt. If she marries one of the witnesses who had testified for her, saying, "It appears clear to me that my first husband is dead," she need not leave her second husband.

24. If a man has two wives, A and B, and if A comes forth and says, "My husband is dead," she herself may remarry on the strength of her own testimony, as we have explained. B, however, may not remarry, because rival wives may not testify in each other's behalf. Even if A remarries first, it cannot be said, "Were her husband not dead, she would not have made herself forbidden to him," for it is possible that out of hatred for B she

is willing to make both of them forbidden to their husband.

If A says, "My husband is dead," while B contradicts her by saying, "He is not dead," A may remarry, because just as A's testimony cannot render B free to remarry, neither can B's testimony render A forbidden to remarry.

If A says, "He is dead," while B says, "He was slain," both may remarry, inasmuch as both agree that he is no longer among the living.

CHAPTER XIII

1. If a woman says to her husband, "You divorced me in the presence of So-and-so and So-and-so," and these same witnesses come forth and contradict her, and if she and her husband thereupon go elsewhere, the world being then at peace; and if thereafter she returns and says, "My husband is dead," she is not to be believed, inasmuch as she is presumed to be a liar, seeking to slip away from under her husband.

If subsequently one witness appears to testify that her husband is indeed dead, she still may not remarry, for she might have hired him so to testify. But if she does remarry, she need not be dismissed, seeing that she has a witness.

2. Likewise, if while the world is in a state of war, a woman comes forth and says, "My husband died in the war," she is not to be believed, even though there had been peace between him and her, for she might base her conclusion upon evidence that the greater part of the company had died, and say, "He, too, died." For instance, if her husband was in the middle of the company, and both those in front of him and those in back of him were slain, she might conclude that he, too, was slain together with them.

She is therefore not to be believed, not even if she says, "He died in the war, and I buried him." If, however, she says, "He died in his bed," she is to be believed.

3. If the presumption is that the world is not in a state of war, and she comes forth and says. "There was a war in such-and-such a place, and my husband died in that war," she may not at the outset remarry. But if she does remarry, she need not be dismissed.

4. Similarly, if a woman says, "My husband died under a collapsed building," she is not to be believed. Likewise, if there was a visitation of serpents and scorpions, and she says, "He was stung by a serpent," or "by a scorpion, and died," she is not to be believed, for she might base her conclusion upon the fact that most of the men have died in this manner, by being stung.

5. If a woman says, "They blew smoke into the house," or "into the cave, and he died, while I was saved," she is not to be believed, because just as a miracle may have happened to her, so might it have happened to him.

If it was a year of famine, and she says, "My husband died," she is not to be believed. If she says, "He died, and I buried him," she is to be believed.

6. If she says, "Heathens," or "robbers, fell upon us. He was slain, but I was saved," she is to be believed, for it is not their way to slay women, which would have entitled us to say, "Just as she was saved, so might he have been saved."

7. If a plague was raging in the world, and she says, "My husband died of it," she is to be believed, for it is a fact well known to everyone that in a plague one person may be spared while another succumbs, and it is possible for young and strong men to die of the plague, while feeble old men survive. There is therefore no cause for apprehension that she may base her conclusion upon the fact that most of the people had died.

8. We have already said that the testimony of a hearsay witness as to a woman's marital status is valid. When does this apply? When the witness had heard a person of mature mind, such as a slave or a bondswoman, say that So-and-so was dead.

If, however, he had heard it from an imbecile or a minor, he may not testify, and the statements of such persons as these cannot be relied upon.

9. If one had heard children say, "We have just come from the funeral of So-and-so; there were so-and-so many eulogizers there; the Sages So-and-so and So-and-so followed his bier; and they did thus-and-so with his bier," he may testify on the basis of their statements as to these, or similar, events, and the deceased's wife may remarry accordingly.

10. If an Israelite says, "I slew So-and-so," the latter's wife may remarry on the basis of his statement, for no man would falsely make himself out a villain, and his statement does testify that So-and-so is indeed dead.

11. We have already said that if a heathen speaks in his innocence, a woman may remarry on the basis of his statement. How so? If a heathen speaking in this manner says, "Alas for So-and-so, who is now dead! How fine a person he was! How many favors did he do for me!"; or if he says, "While I was walking along the highway, So-and-so, who was walking with us, collapsed and died, and we marveled at this, how he died so suddenly," or something similar, indicating that it is not his intention to offer testimony, he is to be believed.

12. An Israelite who had heard a heathen speaking in his innocence may testify as to what he had heard the heathen say, and the deceased's wife may remarry on the strength of this testimony.

When does this apply? When the heathen had no ulterior motive for his statement. If, however, there was an ulterior motive for his statement, there is cause for apprehension that he had some other purpose in mind. If, for example, he says to someone, "Do for me thus-and-so, else I will slay you as I slew So-and-so," he is obviously not speaking in his innocence, because his purpose is to intimidate the other person.

13. Likewise, if one hears the heathen court officers declare, "We caused So-and-so to be executed," he is not to believe them, because they fortify their hands with falsehoods in order to intimidate people. The same applies to all similar cases.

14. A heathen who at the outset speaks in his innocence is to be believed, even if he is subsequently questioned and examined in order to make him reveal the details of the event, and the woman concerned may remarry on the strength of his testimony.

15. We have already made it known that if a witness says, "I heard that So-and-so is dead," even if he heard it from a woman who in turn had heard it from a slave, his testimony as to the woman's marital status is valid, and she may remarry on the strength of it.

If, however, the witness, or the woman, or the slave says, "So-and-so is dead, and I saw him dead," he must be questioned: "How did you see it, and how did you know that he was dead?" If he produces clear proof thereof, he is to be believed. If his proof merely indicates the greater probability of death, the deceased's wife may not remarry, for no testimony as to a person's death is valid unless he is seen to be surely dead, beyond all doubt.

16. How so? If the man is seen to fall into the sea, or even to submerge in the Great Sea, testimony may not be given as to his death, for he might have emerged at another place.

If, however, he falls into confined waters, such as a well or a cave, where the observer has a clear view of all the surroundings, and remains under water long enough for his soul to depart, without reappearing, testimony may be given that he is dead, and his wife may remarry on the strength of it.

Similarly, if he is thrown into the sea, and if a net cast after him brings up a part of his body without which a person cannot survive, testimony may be given that he is dead, and his wife may remarry on the strength of it.

17. If he is seen to fall into a den of lions, leopards, or the like, no testimony may be given as to his death, since it is possible that the beasts would not devour him.

If, on the other hand, he falls into a pit of snakes or scorpions, or into a fiery furnace, or into a seething kettle filled with wine or oil, or if his throat is cut so that both gullet and windpipe are fully or more than half severed, testimony may be given that he is dead, even if he thereupon rises and flees, for he is bound to die eventually. The same applies to all similar cases where survival is impossible and death is bound to follow immediately or soon thereafter, and testimony may therefore be given that he is dead.

18. If he is seen impaled, and birds eating of his flesh, no testimony may be given as to his death, even if he had been first stabbed or made a target for arrows.

If, however, the birds are seen eating at an organ whose removal is certain to cause the soul to depart, such as the brain, the heart, or the intestines, testimony may be given that he is dead.

19. If one witness says, "I saw him die in the war," or "in the collapse of a building," or "I saw him drown in the Great Sea, and he is dead," or the like, indicating the preponderant probability of death, the rule is as follows: If he adds, "I buried him," he is to be believed, and the widow may remarry on the strength of his testimony; if he does not add, "I buried him," the widow may not remarry, but if she does so nevertheless, she need not be dismissed.

20. Likewise, if a single witness testifies for a woman that her husband was drowned in the sea or in a similar body of boundless water, and did not reappear, and that now the memory of him has perished and his name is forgotten, she may not remarry on the strength of this testimony, as we have explained. But if she does so nevertheless, she need not be dismissed. Even if the witness is a heathen, who speaking in his innocence, says, "So-and-so was drowned in the sea," and if the wife remarries on

the strength of this testimony, she need not be dismissed; the Sage, however, who had ruled at the outset that she may remarry, should be placed under a ban.

21. If a man is found slain or otherwise dead, the rule is as follows: If his forehead, nose, and facial features are sufficiently preserved to identify him as So-and-so, testimony may be given that he is dead; if any one of these is missing, no such testimony may be given, even if there are marks of identification—even a mole—upon his body or upon his clothes, for it is possible that it is someone else.

When does this apply? When he is discovered within three days after he was slain or died. After three days no testimony is admissible, since his facial features undergo a change.

22. If a man drowned at sea is cast out by the sea upon dry land, be it even after a long time, the rule is as follows: If his face and nose are recognizable, testimony may be given as to his death, because in the water his appearance changes only after a long time. If after being cast out of the sea, he tarries upon dry land for twelve hours and becomes swollen, no testimony may be given as to his death, insomuch as his appearance has undergone a change.

When his appearance is viewed in order to identify him for the purpose of testimony, it should be examined and observed closely, and this may be done even at night, by lamplight or moonlight.

23. If a man seen standing at a distance says that he is So-and-so, the son of So-and-so, or So-and-so, from such-and-such a place, and is thereupon stung by a serpent and dies; and if bystanders upon drawing nigh find his appearance so changed that they cannot recognize him, his wife may remarry on the strength of their testimony.

24. If a person comes forth and says, "I was told by a court," or "by some people, 'When you go to such-and-such a place, tell them that Isaac, the son of Michael, is dead' "; and if this mes-

senger accordingly comes along and delivers this message to us, without knowing himself who the deceased was, the latter's wife is allowed to remarry, inasmuch as we do know the individual bearing that name, and it cannot be said, perchance it is another Isaac, son of Michael, who is dead.

25. If a heathen and an Israelite had departed together to another place, and if the heathen, upon returning alone, and while speaking in his innocence, says, "The man who went forth with me from this place is dead," the widow may remarry, even if the heathen did not know the deceased, provided that the heathen adds, "I buried him."

26. Similarly, if ten persons had gone forth together from one place to another, bound in chains, or leading camels, or in some similar manner, and a heathen speaking in his innocence says, "The ten persons who were traveling from such-and such a place to such-and-such a place, carrying such-and-such objects, have all died, and we buried them," their wives may remarry.

27. If an Israelite says, "A Jew who was with us died in such-and-such a place. His features were such-and-such, and his identification marks were such-and-such," it cannot be said by way of mere conjecture, "It was So-and-so," unless the witness testifies that it was indeed So-and-so, specifying his name and the name of his city.

If, however, the witness says, "A man went forth with us from such-and-such a city, and subsequently died," an investigation may be made in that city, and if it is found that no one but that particular person had left it, his wife may remarry.

28. If it is found written in a document, "So-and-so, the son of So-and-so, died," or "So-and-so, the son of So-and-so, was slain," and it is evident that this is the writing of an Israelite, his wife may remarry.

Likewise, if a person had lost his speech, and having been tested in the manner prescribed in such a case by the law of divorce and found to be of sound mind, writes that So-and-so,

the son of So-and-so, is dead, his written testimony may be relied upon, and the deceased's wife may remarry.

Such witnesses, who testify to the husband's death, need not be subjected to inquiry and examination, because in such matters the Sages have ruled in the direction of leniency, rather than stringency, in order to facilitate an 'ăgūnah's remarriage.

29. Let it not seem perplexing to you that the Sages have rendered permitted a woman of hitherto strictly forbidden degree, on the strength of the testimony of a woman, a slave, a bondswoman, a heathen speaking in his innocence, a witness who offers hearsay evidence taken from another witness, or a written document, without subjecting the witness to inquiry and examination, as we have just explained. For the Torah insists upon testimony by two witnesses and upon the other rules concerning testimony, only in matters the truth of which cannot be ascertained except out of the mouths of the witnesses and by their testimony, as for instance, when they testify that A has slain B, or has made a loan to B. In matters that can be ascertained through means other than the testimony of the particular witness, where he cannot clear himself if he is exposed as a false witness, as when he has testified that So-and-so is dead, the Torah does not so insist, because in such cases it is uncommon for a witness to testify to a falsehood.

The Sages have therefore been lenient in this matter, and have given credence even to a single witness who offers testimony taken from a bondswoman or to a written document, without subjecting him to inquiry and examination, in order that daughters of Israel should not remain in the state of 'ăgūnah.

TREATISE III

LAWS CONCERNING LEVIRATE MARRIAGE AND ḤĂLIṢAH

Involving Three Commandments,
Two Positive and One Negative
To Wit

1. To contract levirate marriage;
2. To perform ḥăliṣah;
3. That the widow subject to levirate marriage (*yĕḇamah*) shall not marry a stranger until the levir's claim to her has been removed from her.

The woman who is subject to levirate marriage is called "she who is tied to levirate marriage" (*zĕḳuḳah lĕyibbum*); the levir's claim is called "tie" (*ziḳḳah*).

An exposition of these commandments is contained in the following chapters.

NOTE

In the list of 613 commandments prefixed to the Code, those dealt with in the present treatise appear in the following order:

Positive commandments:

[1] 216. To contract levirate marriage, as it is said: *Her husband's brother shall go in unto her, and take her to him to wife* (Deut. 25:5).

[2] 217. To perform ḥălişah, as it is said: *and loose his shoe from off his foot* (Deut. 25:9).

Negative commandment:

[3] 357. That the widow subject to levirate marriage shall not marry a stranger other than her levir, as it is said: *The wife of the dead shall not be married abroad unto one not of his kin* (Deut. 25:5).

CHAPTER I

1. It is a positive commandment in the Torah that a man should contract levirate marriage with the wife of his paternal brother, whether she was married to his brother or only espoused to him, if he dies without issue, for it is said, *If brethren dwell together, and one of them die, and have no child . . . her husband's brother shall go in unto her* (Deut. 25:5).

According to the Torah, it is not necessary for the levir to betroth his sister-in-law, inasmuch as she is already his wife, given to him from heaven. He may therefore go in unto her directly, and her kĕṯubbah is payable out of her deceased husband's estate.

2. If the levir refuses to marry her, or if she refuses to marry him, he must submit to ḥălişah, after which she is permitted to marry any other man. It is a positive commandment in the Torah that the levir must submit to ḥălişah if he refuses to contract levirate marriage, as it is said, *and loose his shoe from off his foot* (Deut. 25:9).

The commandment to contract levirate marriage has precedence over the commandment to perform ḥălişah.

3. As for the statement in the Torah, *and have no child* (Deut. 25:5), it implies either son or daughter, or the issue of either one, inasmuch as in such cases he does have some sort of issue. Nor does it matter whether he has this issue by this wife or by another—this wife is released thereby from both levirate marriage and ḥălişah. Even if his issue is a bastard or an idol-worshiper, that child releases his wife from both ḥălişah and levirate marriage.

4. If, however, he has a child by a bondswoman or by a heathen woman, it does not release his wife, because issue by a bondswoman is slave, and issue by a heathen woman is heathen, and are accounted as no issue. For in the case of a bondswoman

Scripture says, *the wife and her children shall be her master's* (Exod. 21:4), implying that the status of the child is the same as that of its mother; and in the case of a heathen woman Scripture says, *for he will turn away thy son from following Me* (Deut. 7:4), implying that Scripture removes him from being regarded as a member of the congregation.

Even if his child by the bondswoman is emancipated, or his child by the heathen woman is proselytized, their status is the same as that of other proselytes and freedmen, and they do not release his wife.

On the other hand, if he has a child by his bondswoman, and frees both of them, and having married the bondswoman dies without subsequent issue, she is subject to levirate marriage to his brother, even though the son she had by her husband, whom the latter had freed, is still living.

5. If a man dies leaving his wife pregnant, the rule is as follows: If after his death she miscarries, she is subject to levirate marriage; if she gives birth to a living child—even if the child dies at birth—the mother is released from both ḥălişah and levirate marriage.

Scribal law, however, requires that in the latter case it must be known of a certainty that the child had completed its term of months and was born at full nine months. If the number of months is unknown, the rule is as follows: If it survives for thirty days, it is considered viable, and releases its father's wives from both ḥălişah and levirate marriage. If it dies within the thirty days, or even on the thirtieth day—whether it dies of illness, or falls off the roof, or is devoured by a lion—it is doubtful whether it is an aborted or a viable child, and the mother is subject to ḥălişah by Scribal law, but not to levirate marriage.

6. If the deceased has any kind of brother, even a bastard or an idol-worshiper, whether minor or adult, that brother renders the deceased's wife subject to levirate marriage, once his head or the major part of his body has emerged into open air prior to the deceased's death.

If that brother was born of a bondswoman or of a heathen woman, he is not considered his brother in any respect, and does not impose a tie upon the deceased's wife. Even if his birth has taken place in holiness, so long as his conception had taken place out of holiness, he is not considered his brother.

7. Brothers by the same mother are accounted as brothers only in matters touching mourning and testimony. In matters of inheritance or levirate marriage and ḥălişah they are regarded as unrelated, because there is no brotherhood except by the same father.

8. Heathen brothers who have become proselytes, and slave brothers who have been freed, are not regarded as brothers at all, but are considered strangers to each other; even if one of them was conceived out of holiness but was born in holiness, and the other was both conceived and born in holiness, they are still considered strangers. Indeed, even twins born in holiness are not considered brothers unless both their conception and their birth were in holiness.

9. If a man who has several wives dies, the performance by one of them of levirate marriage or ḥălişah releases the others, and the levir may not marry two of them, because it is said, *that doth not build up his brother's house* (Deut. 25:9)—build up one house, not two houses.

Likewise, if the deceased has several brothers, one of them may submit to ḥălişah by, or marry, one of the sisters-in-law, and this makes the other sisters-in-law permitted to other men.

10. If some of the sisters-in-law are eligible to marry a priest, while some are not, the rule is as follows: If the levir wishes to marry one of them, he may marry whichever one he pleases; if he prefers to submit to ḥălişah, it should be performed by one of those who are ineligible to marry a priest, in order that the eligible ones should not disqualify themselves thereby.

11. If several brothers die, their wives thus becoming subject to levirate marriage with the surviving brother, the rule is as

follows: If he can marry them all, he may do so; if not, he may submit to ḥălişah by all of them, or else he may take his choice of them, by having some of them perform ḥălişah and marrying the others, one only from each household.

12. If a levir consummates marriage with his sister-in-law, her co-wives become forbidden to him and to the other brothers. If he or one of the other brothers has intercourse with her co-wife, he transgresses a positive commandment, for it is said, *her husband's brother shall go in unto her* (Deut. 25:5)—unto her, not unto her and her co-wife—and a negative commandment deduced from a positive commandment has the force of a positive commandment.

Likewise, if a levir submits to ḥălişah by his sister-in-law, she and all her co-wives become forbidden to him and to the other brothers. All of these become prohibited by authority of Scribal law, as forbidden relatives of second degree, because inasmuch as the deceased brother has left no issue, all his wives lose the status of forbidden relatives of first degree, and are subject to betrothal like all forbidden relatives of second degree.

13. Once a levir submits to ḥălişah by his sister-in-law, her relatives—for instance, her mother or her daughter—are just as forbidden to him as she herself. She is likewise forbidden to his son or to his brother. Even her relatives of second degree, like her daughter's daughter's daughter, are forbidden, and conversely she is forbidden to his son's son's son. The principle of the matter is that she has the same status as his divorced wife.

Thus also, if she dies while still under levirate tie to him, her relatives are forbidden to him, just as if she had been his wife and had died while under him. All these prohibitions are of Scribal origin.

A man may, however, marry the sister or the other relatives of the co-wife of his sister-in-law who has subjected him to ḥălişah.

14. A levir is forbidden to marry any relative of the woman who is under levirate tie to him—for instance, her mother or her

daughter—until such time as one of his brothers may marry her or submit to ḥălişah by her, and thus remove that tie from her. Only thereafter may the levir marry her mother, her sister, or any other of her relatives, even though they all remain forbidden to his brother who had submitted to ḥălişah by, or had married, the sister-in-law herself, as we have explained.

15. If the levir consummates the marriage with his sister-in-law, and then divorces her, he may take her back if he so desires, because she is his wife in every respect, and is subject to no prohibition whatsoever, either by the Torah or by Scribal decree, on account of her having been his brother's wife.

16. We have already explained in the Laws Concerning Matrimony that the intercourse of a male nine years and one day old is valid. This is a rule handed down by tradition. Therefore, if a minor levir has intercourse with his sister-in-law, he must, if he is nine years and one day old, retain her as his wife. He may not, however, submit to ḥălişah until he has reached his majority and has been examined, inasmuch as in reference to ḥălişah Scripture speaks of *the man* (Deut. 25:7). If he is less than nine years and one day old, his intercourse is invalid.

The intercourse of a male nine years [and one day] old does not effect a complete marital acquisition. Therefore his sister-in-law may not marry another man until he has had intercourse with her once more after he had come of age, or until she has performed ḥălişah, as will be explained.

17. The same applies to a minor sister-in-law: if the levir wishes to marry her, he may do so, but she may not perform ḥălişah until she has reached adulthood and has been examined.

Even if she has had intercourse after reaching the age of twelve, she may not perform ḥălişah until she is examined and found to have the tokens of puberty.

18. Just as the levir may not submit to ḥălişah until he is an adult, so may the sister-in-law perform no ḥălişah until she is an adult.

If a minor has intercourse with his sister-in-law who is also a minor, they must be kept together until they reach adulthood.

19. The sister-in-law may neither contract levirate marriage nor perform ḥălişah until ninety days have passed, exclusive of the day of her husband's death and the day of levirate marriage or of ḥălişah, just like any other wife.

And why may she not perform ḥălişah within these ninety days? Because during that period she is not yet eligible for levirate marriage, as it is said, *And if the man like not to take his brother's wife . . . (she shall) loose his shoe* (Deut. 25:7,9), implying that when she is eligible for levirate marriage she is eligible for ḥălişah; hence when she is not eligible for levirate marriage she is not eligible for ḥălişah. If he nevertheless does contract levirate marriage with her or submit to ḥălişah within these three months, she is exempt and need do nothing further, provided that she is not pregnant.

20. If a levir submits to ḥălişah by his sister-in-law, and she is then found to be pregnant and gives birth, the rule is as follows: If the child is viable, it is as if she had never performed ḥălişah for him; she is therefore eligible to marry a priest, while the levir is permitted to marry her relatives.

If she miscarries, or if the child does not survive for thirty days after birth, the levir, or one of his brothers, must once more submit to ḥălişah by her, because ḥălişah performed by a pregnant woman is invalid, and intercourse with a pregnant woman does not effect levirate marriage.

21. Therefore, if a levir consummates the marriage with his pregnant sister-in-law or submits to ḥălişah by her, her co-wife may not remarry until the child is born, because the child cannot make anything permitted until it emerges into open air.

22. If a levir consummates the marriage with his sister-in-law, and she is subsequently found to be pregnant, they must be separated for the necessary period of time. If she then miscar-

ries, he may resume the marriage; if she gives birth—even if the child dies the day it is born—he must both send her away with a get and submit to ḥălişah by her, after which she is permitted to marry anyone else.

If the child survives for thirty days after birth, it is regarded as viable, and the mother requires no get from the levir, because she is a forbidden relative to him.

23. If six months after her marriage she gives birth to a viable child, it is doubtful whether it is a nine months' child by her first husband or a seven months' child by her second husband. The levir must therefore dismiss her with a get, and the child is legitimate. If he has intercourse with her after the birth of this child, the subsequent children are bastards out of doubt.

CHAPTER II

1. It is a Scribal enactment that a levir may not have intercourse with his sister-in-law until he has betrothed her, in the presence of two witnesses, with a pĕruṭah or its equivalent. This is known as "verbal declaration" (*ma'ămar*).

This declaration, however, does not effect as complete a marital acquisition of the sister-in-law as does intercourse. If one makes this declaration concerning his sister-in-law without her knowledge, it is of no effect, inasmuch as a woman may not be betrothed without her consent.

No such declaration may be made concerning a minor sister-in-law widowed after espousal, except with her father's consent.

2. Just as the levir must betroth his sister-in-law, so must he recite the marriage benediction in the presence of ten men, and must write a kĕṯubbah, as is the rule for anyone who marries a woman.

If a man has intercourse with his sister-in-law without first making the verbal declaration, he acquires her fully and need

not go back and betroth her after having had intercourse with her. He should, however, be given a flogging for disobedience, and must write a kĕṯubbah for her.

3. If a man has intercourse with his sister-in-law—whether by error or deliberately, whether under compulsion or willingly, whether deliberately on his part and by error or under compulsion on her part, whether deliberately on her part and by error or under compulsion on his part, whether she is asleep or awake, whether he has intercourse with her naturally or unnaturally, whether he merely initiates the intercourse or consummates it—in all these cases he acquires her.

4. When does this apply? When his intent is to engage in intercourse. If, however, he falls from a roof and is accidentally coupled with her, or if he goes in unto her while intoxicated, so that he does not realize what he is doing, or if he is asleep, he does not acquire her. If his intent is something else, and he ejaculates into his sister-in-law, he does not acquire her. But if his intent is to ejaculate into a beast, and he ejaculates into his sister-in-law, he acquires her, since in any case his intent is actual intercourse.

5. If the sister-in-law, having married the levir, declares within thirty days, "He did not have intercourse with me," while he says, "I did so," the rule is as follows: If he has already divorced her, he should be compelled to submit to ḥălişah, inasmuch as he has already divorced her with a geṭ. If he has not yet divorced her, he should be compelled either to have intercourse with her or else to submit to ḥălişah and then dismiss her with a geṭ.

If having been divorced by him after thirty days, she says, "He did not have intercourse with me," he should be requested to submit to ḥălişah. If he admits that he did not have intercourse with her, he should be compelled to submit to ḥălişah.

If she says, "He did have intercourse with me," while he says, "I did not," she requires no ḥălişah, for having consummated

the marriage with her, he may not be believed to the extent of making her forbidden to marry any other man.

6. If a man dies and is survived by several brothers, it is the eldest brother's religious duty to marry the widow or else submit to ḥălişah, as it is said, *And it shall be, that the first-born that she beareth* (Deut. 25:6). And the Sages have learned by tradition that here *first-born* signifies the first-born of the brothers, implying that it is the eldest brother who is to raise the name of his deceased brother. As for the phrase *that she beareth,* it refers to the children of the brothers' mother, and not to those of the sister-in-law.

7. If the eldest brother is unwilling to marry the sister-in-law, the rest of the brothers should be requested, one after the other, to do so. If they refuse, the eldest should be addressed again and told, "It is your religious duty—either submit to ḥălişah or marry her." The levir may not be forced to marry her, but he must be compelled to submit to ḥălişah.

8. If the eldest brother says, "Wait until the little brother comes of age," or "until the absent brother returns," or "until the deaf-mute brother recovers; then we will consult him, and if he refuses, I will marry the sister-in-law or submit to ḥălişah," no attention need be paid to him; rather, he should be told, "It is your religious duty—either submit to ḥălişah or marry her."

9. So, too, if the eldest brother is away in another country, his younger brother may not say, "The religious duty is my eldest brother's—wait for him until he returns." Rather, the brother who is present then and there should be told, "Either marry your sister-in-law or submit to ḥălişah."

10. The widow who is liable to marry her levir but refuses to do so, has the same status as a wife who has rebelled against her husband. Her levir should be compelled to submit to ḥălişah by her, and she should be dismissed without payment of her kĕṯubbah.

If the deceased husband is survived by several wives, the one among them who, when requested by her levir to marry him, refuses to do so, is accounted a rebellious wife. He must then submit to ḥălişah by her, and she is dismissed without her kĕṯubbah. Her co-wives, however, who were not requested to marry the levir, are entitled to their kĕṯubbahs, like any other widows.

11. If there are several levirs, and the eldest of them requests his sister-in-law to marry him, and if she is unwilling to do so but is willing to marry his brother, no attention need be paid to her, because the religious duty is the eldest brother's.

12. If the eldest brother says, "I refuse either to marry you or to submit to ḥălişah. Behold, my brothers are before you!"; and if when one of the other brothers requests her to marry him, she is unwilling to do so, but is willing to marry another brother, who is likewise willing to marry her, she is not to be regarded as a rebellious wife. Once the eldest brother, upon whom the religious duty lies, has removed himself, the other brothers are all on the same level. So long as she is willing to marry one of them, and he is willing to marry her, she is not in fact guilty of rebellion.

Moreover, even if one of the brothers is away in another country, and she says, "Let me wait for him until he comes back and marries me. As for this one, I am unwilling to marry him," she is likewise not guilty of rebellion. Rather, the older brother, who is not the eldest and who has requested her to marry him, should be told, "If you are willing to submit to ḥălişah by her and pay her kĕṯubbah, you may do so. If not, behold, she is willing to wait until your brother comes back; after all, you have no prior right over him."

13. If the brother for whom she has held her decision in suspense comes back and refuses to marry her, the matter reverts to the brother who had requested her to marry him and was refused by her, and she should be told, "There is no levir here to marry you but this one, and the duty to marry the levir has prior-

ity." She must therefore either marry him or be dismissed without her kĕṯubbah, like any other rebellious wife.

14. Any sister-in-law concerning whom we have said that she must perform ḥălişah and may not marry her levir, is entitled to her kĕṯubbah, if she has one, like any other widow.

So, too, if the levir is afflicted with boils or other male blemishes, he must submit to ḥălişah by her, and she is entitled to her kĕṯubbah.

If she develops blemishes while awaiting levirate marriage, "his field is flooded," and if he then refuses to marry her, he must submit to ḥălişah and pay her her kĕṯubbah.

15. If the sister-in-law had vowed during her late husband's lifetime that she is to derive no benefit from her levir, or from any Jew, the levir should be compelled to submit to ḥălişah by her, and she is entitled to her kĕṯubbah.

If she had made this vow after her husband's death, the levir should be requested to submit to ḥălişah by her. If he refuses, she is regarded as a rebellious wife.

Thus also, if her vow, even when made while her husband was living, was intended by her to prevent her levir from eventually marrying her, the levir may not be compelled to submit to ḥălişah, unless she in fact rebels, in which case she is to be dismissed without her kĕṯubbah.

16. If the sister-in-law, when requested by her levir to perform ḥălişah, replies, "I will neither perform ḥălişah nor claim my kĕṯubbah, but will rather continue to dwell in my husband's house like any other widow," no attention need be paid to her, inasmuch as she has been given unto the levir from heaven—if he wishes to marry her, he may do so; if not, he may submit to ḥălişah and pay her her kĕṯubbah.

Moreover, even if she says, "I will maintain myself at my own expense, and will remain an *'ăgunah* all my life," no attention need be paid to her, because the levir can say to her, "As long as you are tied to me, no other woman will be given me

to wife." Even if he already has a wife, it is still possible for him to take a second wife, or a quarrel may arise in his house on account of the sister-in-law.

17. In the case of a sister-in-law who holds no kĕṯubbah from her late husband, because she was forbidden to him, but is not forbidden to the levir, as will be explained, the rule is as follows: If the levir is willing to marry her, he may do so, and she is not entitled to a kĕṯubbah from him, just as she was not entitled to one from her late husband. As for the supplementary amount, the rule governing it in the case of the levir is the same as in the case of her late husband.

If, however, her husband had written for her no kĕṯubbah at all, or if she had sold her kĕṯubbah to him, or had waived her right to it, the levir must write a kĕṯubbah for her, the same as for any other widow.

18. A sister-in-law is forbidden to marry a stranger before her levir either has intercourse with her or submits to ḥălişah by her, because it is said, *the wife of the dead shall not be married abroad unto one not of his kin* (Deut. 25:5).

If she does marry another man, and he has intercourse with her, both are liable to a flogging, and he must dismiss her with a geṭ, even if he already has several children by her. She becomes forbidden both to him and to her levir, and the levir must submit to ḥălişah by her, and only thereafter is she permitted to marry someone else.

19. If she is only betrothed to another man, she does not become forbidden to her levir; rather the stranger who has betrothed her must give her a geṭ, and her levir may then either marry her or submit to ḥălişah.

If her levir is a priest who may not marry a divorcée, she must be dismissed by the stranger with a geṭ just the same, in order that the sinner should not be rewarded, and the levir must then submit to ḥălişah.

20. If the stranger who had divorced her after espousal remarries her after her levir has submitted to ḥălişah, she need not be taken away from him.

If, however, he divorces her after marriage, and then remarries her after her ḥălişah, she must be taken away from him, because her case is similar to that of a married woman who has remarried, and whose first husband then returns—she is forbidden to both men, as we have explained.

The sister-in-law who plays the harlot while still liable to levirate marriage, does not thereby become forbidden to her levir —he may submit to ḥălişah or marry her, whichever he desires.

21. In the case of a sister-in-law whose status is, according to Scribal law, in doubt as to whether she is subject to levirate marriage or not—as for instance, one who has given birth to a premature child that died within thirty days, and is required by Scribal law to perform ḥălişah out of doubt, as we have explained—if she goes forth and becomes betrothed to another man before ḥălişah, the levir must submit to ḥălişah by her, and she may then continue to abide with her husband.

If she was betrothed to a priest, who may not marry a woman who had performed ḥălişah, the levir need not submit to ḥălişah by her, because a wife may not be made forbidden to her husband merely on the ground of a doubt based on Scribal law.

If the priest divorces her or dies, she must perform ḥălişah, after which she is at the outset permitted to marry anyone else.

CHAPTER III

1. If a man says, "This person is my son," or if he says, "I have children," he is to be believed, and he thereby exempts his wife from both ḥălişah and levirate marriage.

2. If he says, "This person is my brother," or if he says, "I have brothers," he is not to be believed to the extent of rendering

his wife forbidden to remarry, by making her subject to levirate marriage, for his obvious intention is to forbid her to remarry after his death.

3. If the presumption was that he had brothers, but when about to die he says, "I have no brothers," he is not to be believed.

So, too, if he says concerning a person presumed to be his brother, "This person is not my brother," he is not to be believed.

If the presumption is that he has no brothers, but rumor has it that there are witnesses to testify that he does have brothers, although these witnesses are at present in another country, there is ground for apprehension, even if he himself says when about to die, "I have no brother." She must therefore wait until the witnesses concerned return and are examined.

4. If a man has illicit intercourse with a woman, whether single or married, and causes her to become pregnant, and then says, "This unborn child was sired by me"—even if she admits it—the child, though considered his as far as inheritance is concerned, is only doubtfully his as far as levirate marriage is concerned. For just as she had played the harlot with him, so might she have played the harlot with another man, and whence shall it be known for a certainty that the child is his, seeing that he has no presumption to support him? The child's status must therefore remain forever in doubt, and the more stringent rule must be applied to his case, that is, his mother must perform ḥălişah, and may not marry the father's brother.

5. A single witness is to be believed when he testifies in behalf of a woman subject to levirate marriage that her husband is dead, and she may then marry her levir on the strength of his testimony. He may likewise be believed if he testifies that her levir is dead, or that a son was born to her husband, thus making her free to marry a stranger.

Even a slave, or a woman, or a heathen speaking in his innocence is eligible to testify to the death of the levir, just as he is

eligible to testify to the death of the husband, thus making the widow free to remarry, as we have explained in the Laws Concerning Divorce.

6. The five women who may not testify in each other's behalf concerning the death of her husband, are also ineligible to testify in her behalf concerning the death of her levir.

The rules governing the testimony concerning the levir's death are the same as those governing the testimony concerning the husband's death, also in regard to witnesses who contradict each other about the levir's death, and in regard to all other matters.

7. If two sisters-in-law, A and B, arrive from a country beyond the sea, and each one claims that her husband is dead, A is forbidden to marry a stranger because of her tie to B's husband, and conversely B is forbidden to marry a stranger because of her tie to A's husband, inasmuch as each one's testimony concerning the death of the other's levir is invalid, as we have just explained.

8. If A has a witness to testify that her husband is dead, she remains nevertheless forbidden, because her forbidden status is due not to her husband but to her levir. B, however, who has no witness, is now permitted to marry a stranger, inasmuch as the witness has testified that her levir is dead, and she herself is to be believed when she says, "My own husband is also dead."

9. If A has children, and B has not, B is forbidden to remarry, while A is permitted. If another levir is available, he is obligated to marry both of them.

10. If this other levir who has married them both dies childless, the two sisters-in-law are again forbidden to marry a stranger, as they were at the outset.

If, however, having been married to this brother-in-law, they were divorced, they are then permitted to marry a stranger.

11. Even though a woman is to be believed when she says, "My husband is dead," and is permitted on the strength of this

claim to marry either a stranger or her levir, as the case may be, she is not to be believed when she says, "My levir is dead," insofar as marrying a stranger is concerned, since the latter case involves a negative commandment, which might otherwise seem light in her eyes.

The levir likewise is not to be believed when he says, "My brother is dead," for the purpose of marrying the deceased's widow, for he may have cast his eyes upon her.

Nor is a woman to be believed when she says, "My sister is dead," so that she might enter her house, nor is a man when he says, "My wife is dead," in order to marry her sister, unless two witnesses testify that the sister is indeed dead. Only then may the other woman enter the deceased's house, because the testimony of a single witness is credited only in order to permit an ʿăgūnah to remarry, as we have explained.

12. Therefore, if a woman, together with her husband and her levir, goes to a country beyond the sea, and upon her return declares, "First my husband died, and then my levir," or "First my levir died, and then my husband," she is not to be believed.

If, however, only she and her husband had gone abroad, and if upon her return alone she declares, "I acquired a brother-in-law in the country beyond the sea, but he died," she is to be believed, whether she says, "My levir died first, and then my husband," or "My husband died first, and then my levir whom I acquired," because the mouth that forbids is the mouth that permits.

13. If a woman, her husband, and her son go to a country beyond the sea, and if upon her return she declares, "First my husband died, and then my son," she is to be believed, inasmuch as at the time when she left, the presumption was that she was, if widowed, permitted to marry a stranger.

If she says, "First my son died, and then my husband," she is not to be believed as far as levirate marriage is concerned, and her declaration constitutes grounds for apprehension. She must therefore perform ḥălīṣah, and may not marry her levir.

14. If a woman and her husband alone go abroad, and if upon her return she declares, "A son was born to me in the country beyond the sea, but he died, and then my husband died also," she is to be believed, and may marry her levir, because at the time when she left she was presumed to be, if widowed, permitted to her levir.

If she says, "My husband died first, and then the son that was born to me," she is not to be believed to the extent of exempting herself from levirate marriage or ḥălişah, and her declaration constitutes grounds for apprehension. She must therefore perform ḥălişah, and may not marry her levir.

15. When does this apply? When she is at the outset ineligible to marry a priest; for instance, if she is a divorcée or a profaned woman, or if she says, "We were in a cave when the two of them died." If, however, the matter is not so, she may not perform ḥălişah; for should she perform it, witnesses might later come forth to testify that the event was as she had said, namely that the husband died first, so that the ḥălişah would be as nothing, and she might then marry a priest. Yet those who have observed her perform ḥălişah and then marry a priest would consequently think that a woman who has performed ḥălişah is eligible to marry a priest, since they would not know that witnesses had come forth.

She may therefore neither perform ḥălişah nor marry her levir, but must remain under the presumption of having been tied to him at the time of her departure, until such time as witnesses may come forth.

16. The same applies to a woman whose husband and co-wife had gone to a country beyond the sea, if two witnesses subsequently come forth and say to her, "Your husband is dead"—she may neither perform ḥălişah nor marry her levir ever, until such time as it becomes known whether her co-wife has given birth or not.

And why is she not permitted to perform ḥălişah nine months after the husband's death, so that she might in any case be

permitted to marry a stranger, seeing that if her co-wife has given birth, she is certainly exempt, and if her co-wife has not given birth, she has now performed ḥălişah? As a precaution, lest after the ḥălişah it should become known that her co-wife has in fact given birth to a viable child, with the result that the ḥălişah would be void, and in the meantime, after the ḥălişah, she might have married a priest. Thus anyone seeing her, and unaware of the witnesses who had come forth, would assume that a woman who had performed ḥălişah is permitted to marry a priest, and would consequently testify that he had indeed seen such a woman marry a priest with the sanction of the court.

Therefore, if she was at the outset ineligible to marry a priest, she may perform ḥălişah after nine months, and may then marry a stranger.

The co-wife, however, who was with her husband when he died, must wait ninety days, like any other widow subject to levirate marriage, and may then either perform ḥălişah or marry her levir, and need have no apprehension concerning her co-wife in another country, inasmuch as her husband was not with the latter in the same country.

17. If a woman whose husband has died has a mother-in-law in a country beyond the sea, she need not feel any apprehension that her mother-in-law may have given birth, thus giving her a levir in another country, because no precaution has been enacted for such a contingency. Rather the widow is allowed to remain under the presumption of being permitted to remarry.

The same rule applies to a woman whose husband has died leaving a son in another country. She is permitted to marry a stranger, and no apprehension need be felt that the son may have died; rather, the woman remains under her previous presumption.

18. If the mother-in-law was pregnant at the time of her departure, the wife should feel apprehensive on that account and may not marry a stranger, until such time as she finds out the

result of her mother-in-law's pregnancy, since she might have acquired a levir prior to her husband's death.

19. If a woman whose husband and son had gone to a country beyond the sea, is told, "First your husband died, and then your son," and subsequently remarries, and if thereafter it becomes known that the reverse was true, she must leave her second husband, but her child by him is legitimate.

If she is told, "First your son died, and then your husband," and thereupon marries her levir, and if thereafter it becomes known that the reverse was true, she must leave her second husband, and her child by him, whether born before the report or after, is accounted a bastard.

CHAPTER IV

1. How is the commandment of ḥălişah to be performed? The widowed sister-in-law should go after the levir to the locality where he resides and come before the judges, who should then summon him and offer him counsel that is appropriate to both him and her. If it is beneficial to advise levirate marriage, they should so advise him. If it is beneficial to advise ḥălişah—for instance, if she is a child and he is an old man, or vice versa—they should so advise him.

2. The Judges should appoint a place where they are to sit, and there the widow should perform ḥălişah in their presence, for it is said, *Then his brother's wife shall go up to the gate unto the elders*, etc. (Deut. 25:7).

If the judges had not arranged to sit nor appointed a meeting place, but met by chance, and both the levir and his sister-in-law likewise happened to be in their presence, and then and there performed ḥălişah, the ḥălişah is valid.

3. Both she and the levir should be taught to recite their parts until they are fluent in them. In particular, she should be able to

say, *he will not perform* (Deut. 25:7) in one breath, and then say in another breath, *the duty of a husband's brother unto me* (*ibid.*), in order that it should not sound as if she had said, "No, he will perform the duty of a husband's brother unto me."

4. Once she has become fluent in her recitation, it matters not if she does not finally read the aforementioned words in one breath. But if she has not yet acquired fluency, she must be made to practice until she has.

5. Ḥălişah must be performed by day and not by night, and before three persons who know how to instruct the parties in recitation. If one of the three is a proselyte, he is disqualified. Even if his father was a proselyte and his mother an Israelite, the ḥălişah may not be performed—both his father and his mother must be Israelites.

The proper procedure, however, is to perform it before five persons, in order to make the matter publicly known, even if the two additional persons are unlettered.

6. How is ḥălişah to be performed? A leather shoe, with heel attached, and not sewn with flaxen thread, should be brought, and the levir should put it on his right foot and tie its laces on that foot. He and his sister-in-law should then stand before the court, who should thereupon make her recite in the holy tongue, *My husband's brother refuseth,* etc. (Deut. 25:7), whereunto the levir should be made to respond with, *I like not to take her* (Deut. 25:8).

The levir should then plant his foot firmly on the ground, whereupon she should sit down before him, extend her hand in the sight of the court, loosen the laces of the shoe off his foot, remove the shoe, and cast it to the ground. The moment the greater part of the heel is off, the sister-in-law is permitted to marry a stranger.

7. She should then rise and spit out on the ground before him sufficient saliva to be visible to the judges, for the commandment

of ḥălişah demands that both of them should stand during the recitation and during the spitting, and that the judges should see the saliva issuing from her mouth.

The judges should then make her recite, *So shall it be done unto the man that doth not build up his brother's house. And his name shall be called in Israel, "The house of him that had his shoe loosed"* (Deut. 25:9–10).

All this should be recited in the holy tongue, for it is said, *So,* implying in this same tongue. And all those who are sitting there should respond after her, *of him that had his shoe loosed,* three times.

8. The sister-in-law must have the intention to perform ḥălişah for the levir, and he must have the intention to submit to it. Both of them must perform these acts for that specific purpose.

A blind man cannot submit to ḥălişah, for it is said, *and spit in his face* (Deut. 25:9), and the blind man cannot see her saliva.

9. The order of procedure for ḥălişah is thus as follows: First the sister-in-law recites, *My husband's brother refuseth to raise up unto his brother a name in Israel; he will not perform the duty of a husband's brother unto me* (Deut. 25:7). Then the levir responds, *I like not to take her* (Deut. 25:8). She then removes the shoe, spits, and recites, *So shall it be done unto the man that doth not build up his brother's house. And his name shall be called in Israel, "The house of him that had his shoe loosed"* (Deut. 25:9–10).

10. This sequence is not essential; rather, if neither he nor she perform first the recitation, or if she spits first and then removes the shoe, or recites and then spits, her ḥălişah is valid.

11. And why should she not go back and spit again as the order requires? Lest people should say, "Spitting alone has no effect, and does not make her ineligible to marry one of the brothers."

12. If she has only removed the shoe, without reciting and spitting, the ḥălişah is valid.

Needless to say, if she has removed the shoe and recited, but did not spit, or removed the shoe and spat, but did not recite, the ḥălişah is likewise valid.

13. When does this apply? When the parties are able to speak and are thus fit to recite.

A man or a woman who is mute, therefore, may not perform ḥălişah, but if they do, their ḥălişah is defective.

They are, however, not analogous to deaf-mutes who have performed ḥălişah, whose act is as nothing, because deaf-mutes are not regarded as persons of sound mind.

14. If the sister-in-law merely spits, without removing the shoe and reciting, or if she spits and recites, without removing the shoe, it is the same as a defective ḥălişah.

If both she and he recite, but she neither removes the shoe nor spits, it is as if nothing was done, because it is said, *So shall it be* DONE *unto the man* (Deut. 25:9)—it is the doing, i.e., the removal of the shoe and the spitting, that avails, whereas the recitation neither hinders nor avails.

15. If she removes the shoe, spits, and recites, while both of them are seated, or are reclining on their sides; or if the shoelace is tied to his leg from the knee downward; or if she performs ḥălişah in the presence of three unlettered persons who do not know how to instruct in recitation; or if the levir who submits to ḥălişah is blind—in all these cases the ḥălişah is valid.

16. If she performs ḥălişah at night, or in the presence of only two persons, or in the presence of three, one of whom is found to be a relative or otherwise disqualified, or if the shoe is tied above the knee; or if the levir unties the shoe and she removes it, or vice versa; or if she has the specific intention but he has not, or vice versa; and also if a minor girl performs ḥălişah for an adult levir—in all these cases the ḥălişah is defective.

Likewise, if she performs ḥălişah in the presence of only one person, or even performs it while she and her levir are alone at night, it is a defective ḥălişah.

If, however, a deaf-mute, an imbecile, or a minor submits to ḥălişah, or if a man submits to ḥălişah by a woman who is exempt from it and from levirate marriage, there is no ḥălişah.

17. A levir whose right foot has been severed may not have ḥălişah performed on his left foot. But if his sister-in-law nevertheless removes the shoe from his left foot, the ḥălişah is defective.

If his foot is bent backward or turned on its side, or if he walks on the tips of his toes, he may not submit to ḥălişah, because the levir who submits to ḥălişah must plant his heel firmly on the ground, which a person so crippled cannot do. Nevertheless, if the sister-in-law performs ḥălişah for a levir whose foot is so deformed, the ḥălişah is defective.

18. A sister-in-law whose hands have been severed may at the outset perform ḥălişah, be it even with her teeth, because Scripture does not say "and she shall loose his shoe with her hand."

If the ḥălişah is performed with a cloth shoe, it is no ḥălişah. But if the shoe has no heel, or is sewn with flaxen thread, or is made of hair, bast, bamboo, or wood, or is so large that the levir could not use it for walking, or so small that it does not cover the greater part of his foot, or so torn that it does not cover the greater part of the foot, or so defective that it cannot hold the greater part of the foot—in all these cases her ḥălişah is defective.

19. If the sister-in-law performs ḥălişah with a wooden sandal covered with leather, or a sandal whose lower part is leather and upper part is hair; or if she removes the left sandal from the levir's right foot; or if the shoe is not the levir's property; or if it is too large, but can still be used by him for walking; or if it is too small, but still covers the greater part of his foot; or

if it is torn, but still covers the greater part of the foot; or if it is defective, but still can hold the greater part of his foot—in all these cases the ḥălişah is valid.

20. A sandal under observation for leprosy or declared leprous, or a sandal used to shoe an idol's foot, may not be used for ḥălişah, but if it is so used, the ḥălişah is valid, even though the idol's sandal is forbidden for benefit.

On the other hand, if a sandal made out of an offering to an idol, or originating in a condemned city, or made for a dead body's burial is used for ḥălişah, the ḥălişah is defective, inasmuch as such a sandal was not intended to be used for walking.

21. If she rips the shoe off his foot, or burns it off, or if the levir has on two shoes, one over the other, and she removes the outer shoe—even if in doing so she rips the inner shoe also, so that his foot is exposed—the ḥălişah is defective.

22. If she eats garlic, garden rocket, or anything similar that stimulates the flow of saliva, so that it drips out of her mouth, it is as nothing—the saliva must issue of its own accord.

23. If she spits blood, or if it flows out of her mouth, it is as nothing. But if she sucks it in and then spits it out, it is valid, because blood that is sucked in is perforce diluted with some saliva.

If she spits, but the saliva is carried away by the wind before it reaches over against his face—for instance, if she is tall and he is short—it is as nothing. If, however, the saliva is blown away after reaching over against his face, it is valid, even if it did not reach the ground.

Thus also, if the judges did not see the saliva as it issued from her mouth, it is valid.

24. Ḥălişah performed under false pretenses is defective. How so? For instance, if the levir is told, "Submit to ḥălişah by your sister-in-law, and you will thereby wed her"; or if he is told, "Submit to ḥălişah by her, because this is a religious duty, and you will

lose nought by it, for should you later wish to marry her, you will be able to do so," or anything similar, the ḥălişah is defective.

If, however, he is misled by being told, "Submit to ḥălişah by her, on condition that she is to pay you two hundred zuz," or "on such-and-such other condition," the ḥălişah is valid, even if no payment is made and the condition is not fulfilled, for his intention was to submit to ḥălişah by her.

25. If the levir, prior to submission to ḥălişah, issues a declaration invalidating it, his ḥălişah is defective. It is, therefore, proper for the judges to tell him to annul this declaration, just as they would do in the case of a get.

If Israelites press the levir, or even beat him, until he submits to ḥălişah, the rule is as follows: If they act according to law, his ḥălişah is valid. If they act contrary to law, as for instance, if they are unlettered persons, or act in error, his ḥălişah is defective. If it is heathens who press him on their own initiative, the rule is as follows: If the law requires him to submit to ḥălişah, his ḥălişah is defective; if the law does not, there is no ḥălişah.

26. Wherever we have said, "there is no ḥălişah," or "he has done nothing," or "it is as nothing," the meaning is that it is the same as if no ḥălişah had been performed by the sister-in-law for the levir. Hence her relatives are not forbidden to him, she is not disqualified from marrying a priest, and she still may marry her levir.

And wherever we have said, "her ḥălişah is defective," the meaning is that her relatives are forbidden to her levir, while she is disqualified from marrying a priest, and may not marry any one of her brothers-in-law, including the levir, nor may she marry a stranger, until she performs a valid ḥălişah.

27. If she transgresses and does remarry, the levir must submit to a proper ḥălişah by her, while she may remain under her second husband, and need not be compelled to leave him.

28. A sister-in-law who has grown up among her brothers-in-law may marry one of them, and there is no ground for apprehension that she may have performed ḥălişah for one of them privately, and thus become disqualified from marrying any one of them.

If, however, she is observed removing the shoe of one of them, she becomes disqualified, because she may have intended to perform ḥălişah. Moreover she requires another and proper ḥălişah to permit her to marry a stranger.

29. The bill of ḥălişah executed for her is no more than an act of the court, intended as evidence in her hand that she had performed ḥălişah.

The judges may not certify a ḥălişah unless they know the parties concerned. Therefore, those who observe her perform ḥălişah may write a writ of ḥălişah for her, even if they do not know that she is the daughter of So-and-so and the widowed wife of So-and-so, and that the man who has submitted to ḥălişah by her is the latter's brother, inasmuch as the judges in whose presence she has performed ḥălişah were aware of their identity before they permitted the ḥălişah.

30. *AND THIS IS THE FORM OF THE WRIT OF ḤĂLIṢAH IN COMMON USE:*

"On such-and-such day of the week, such-and-such day of such-and-such month, in the year so-and-so of the creation of the world, according to the reckoning that we use in such-and-such place, we, the judges, of whom some are signed hereinafter, sitting three as one, were in session at court when So-and-so, daughter of So-and-so and widow of So-and-so, appeared before us and presented to us a certain man named So-and-so, son of So-and-so."

"And this woman, So-and-so, spoke unto us thus: 'This man, So-and-so, son of So-and-so, was brother by the same father of So-and-so, my husband, to whom I was married, and who succumbed, bequeathing life to our masters and to all Israel, but

leaving neither son nor daughter to be heir, take possession, and raise up a name in Israel. And this man, So-and-so, his brother, is fit to contract levirate marriage with me.' "

" 'Now then, our masters, say ye unto him, If he be minded to marry me, let him do so; if not, let him turn his right foot toward me in your presence, and I will loose his shoe from his foot and spit before him.' "

"And we ascertained that this man, So-and-so, was indeed brother by the same father of So-and-so, deceased, and we said unto him, 'If thou be minded to marry her, do thou so; if not, turn thy right foot toward her in our presence, that she might loose thy shoe from thy foot and spit before thee.' "

"And he answered and said unto us: 'I am not minded to marry her.' We forthwith caused this woman to recite, *My husband's brother refuseth to raise up unto his brother a name in Israel; he will not perform the duty of a husband's brother unto me* (Deut. 25:7)."

"And we also caused this man, So-and-so, to recite, *I like not to take her* (Deut. 25:8). And thereupon he turned his right foot toward her, and she loosed his shoe from his foot, and spat before him with spittle that was seen by us as it proceeded from her mouth to the ground."

"And we further caused this woman to recite, *So shall it be done unto the man that doth not build up his brother's house. And his name shall be called in Israel The house of him that had his shoe loosed* (Deut. 25:9–10)."

"And we, the judges, and all those that were sitting before us, answered after her, *him that had his shoe loosed, him that had his shoe loosed, him that had his shoe loosed,* three times."

"And after this act was performed before us, we have permitted this woman, So-and-so, to go forth and be wed to whomsoever she may desire, and let no man hinder her from this day forevermore."

"And this woman, So-and-so, demanded of us this writ of ḥălişah, and we have written, signed, and given it to her, to certify her right according to the law of Moses and Israel."

31. The writ must be attested by three of the judges, or by two of the three, or by two other persons who have witnessed the ḥălişah, even though they are not the judges before whom it was performed, as we have explained.

Even a woman, a slave, or a minor who knows the parties and has understanding may be believed when they say, "This is So-and-so, brother of So-and-so, and this is his widowed sister-in-law," and ḥălişah may be performed on the strength of their testimony.

This is not so in regard to other testimonies required by the Torah, whether they concern money matters or prohibitions. The reason is that here the matter is bound to be revealed eventually, so that it will be possible to establish the truth from other sources, as we have explained at the end of the Laws Concerning Divorce.

If the levir wishes to marry his sister-in-law, he should betroth her, consummate the marriage with her, and write a kĕṯubbah for her, as we have already stated.

32. *AND THIS IS THE FORM OF THE LEVIRATE KĒṬUBBAH IN COMMON USE:*

"On such-and-such day of the week, such-and-such day of such-and-such month, in the year so-and-so, according to such-and-such reckoning that we use in such-and-such place, So-and-so, son of So-and-so, came before us and spoke unto us thus: 'My brother by my father has succumbed, bequeathing life to our masters and to all Israel, but leaving neither son nor daughter to be heir, take possession, and raise up a name in Israel. He did leave this wife, named So-and-so, daughter of So-and-so, and it is fitting for me, according to the Torah, to take her in levirate marriage, as it is written in the Book of the Torah of Moses, *Her husband's brother shall go in unto her, and take her to him to wife* (Deut. 25:5).' "

"And this woman, So-and-so, being of like mind, gave herself in levirate marriage to So-and-so, son of So-and-so, her brother-in-law, in order to raise up a name in Israel, as it is written,

And it shall be, that the first born that she beareth shall succeed in the name of his brother that is dead, etc. (Deut. 25:6)."

"And her levir, So-and-so, wrote for So-and-so, his sister-in-law, the sum of two hundred zuz that is fitting for her, having been inscribed in her kĕṯubbah·written for her by her first husband, and he added thereunto, of his own, such-and-such a sum. And this is the dowry which she brought to him," etc., as in other forms of the kĕṯubbah.

33. *THE FORM OF THE KĔṮUBBAH:*

"On such-and-such day," etc., "So-and-so, son of So-and-so, said to So-and-so, daughter of So-and-so, the virgin bride: 'Be thou wife unto me, according to the law of Moses and Israel, and I will, by the Word of Heaven, serve, honor, support, feed, sustain, and clothe thee, according to the practice of Jewish men who serve, honor, support, feed, sustain, and clothe their wives in truth.' "

" 'And I give thee the price of thy virginity, two hundred zuz, equal to twenty-five silver zuz, as is fitting unto thee, and thy food, raiment, and need, and am going in unto thee, according to the way of all the world.' "

"And this woman, So-and-so, being of like mind, became wife unto this man, So-and-so. And he, of his own will, added to the statutory amount of her kĕṯubbah a supplementary amount, making the total so-and-so much. And the dowry which she has brought unto him amounts to so-and-so much. The whole whereof was received by this bridegroom, and has come to his hand, and into his possession, and he has assumed all of it upon himself as a loan and a debt."

"And So-and-so, the bridegroom, spoke unto us thus: 'The responsibility for the entire kĕṯubbah, to wit, the statutory amount, the dowry, the supplementary amount, and all the other conditions attached to the kĕṯubbah, I accept upon myself, and upon my heirs after me, and upon the choicest possessions and acquisitions that I have under all the heavens, that I have acquired and shall acquire in the future, whether real estate or

movables adjunct to real estate—all shall be guarantee and surety for this entire kĕṯubbah, to wit, the statutory amount, the dowry, and the supplementary amount, to be repaid therefrom during my lifetime, or after my death, even from the cloak on my back.'"

"And we have received from this man, So-and-so, all that is written and specified hereinbefore, with a perfect act of acquisition, not as an unsecured promise, nor as a mere documentary form, but with the power and rigor of all kĕṯubbah writs that are customary in Israel, and in proper accordance with the enactment of our masters, of blessed memory."

"And we have signed this kĕṯubbah writ on the date aforementioned; and let everything therein be clear, firm, and established."

34. If the kĕṯubbah is that of a widow, the form is "So-and-so, the widow." If it is the kĕṯubbah of a divorcée, the form is "So-and-so, the divorcée." Similarly, if she was once a captive, the form is "So-and-so, formerly a captive woman," in order that a priest should not be led to stumble on her account.

The form in these cases is further thus: "And I give thee as thy price one hundred zuz, equal to twelve and one half silver zuz, as is fitting unto thee," etc.

35. In writing a writ of ḥălişah or a levirate kĕṯubbah, the Scriptural verses therein should be overlined, because one may not write three words from Scripture without overlining.

A widow who has performed ḥălişah may remarry on the very day of the ḥălişah, since she may not perform it until ninety days after her husband's death.

CHAPTER V

1. A levir who gives a regular geṭ to his sister-in-law thereby disqualifies her and her co-wives from marrying him or his brothers, inasmuch as he has done the same as if he had sub-

mitted to ḥălişah by her. Such a regular geṭ avails in the case of a widowed sister-in-law only on the authority of the Scribes, seeing that normally it effects the divorcement of a married woman.

Any geṭ that would disqualify one's wife from marrying a priest, disqualifies his sister-in-law from levirate marriage, but the latter may not marry a stranger until her levir submits to ḥălişah by her.

2. Although a verbal declaration does not constitute a complete acquisition of the sister-in-law and does not make her a married woman in every respect, she nevertheless requires a geṭ from the levir, and may not marry a stranger except by way of ḥălişah.

3. How so? If the levir, having made a verbal declaration concerning his sister-in-law, refuses to have intercourse with her, he must write a geṭ for her, inasmuch as she has been betrothed to him; and secondly, he must submit to ḥălişah by her, in order to permit her to marry a stranger, because a widowed sister-in-law may not marry a stranger except after her levir's intercourse with her or after ḥălişah. The geṭ alone disqualifies her from levirate marriage, but does not permit her to marry a stranger; and the verbal declaration alone does not constitute as complete an act of acquisition as does intercourse.

4. If the levir makes a verbal declaration concerning his sister-in-law, and then changes his mind and gives her a geṭ retracting his declaration, the latter becomes null and void, and she is once more permitted to contract levirate marriage. It would seem to me, however, that she is then permitted only to his brothers; as for the one who has given her the geṭ, she remains forbidden to him.

5. If his geṭ retracts the levirate tie, but not his verbal declaration, it renders her ineligible to him and to the other brothers, as we have explained, and she requires another geṭ to release her from his declaration, as well as ḥălişah to allow her to marry a stranger.

6. A verbal declaration by the levir concerning his sister-in-law which is neither preceded nor followed by any other act, except his intercourse with her, is called a valid declaration.

If it is preceded by a geṭ or by ḥălişah, whether from this levir or from another, whether to her or to her co-wife; and also if it is preceded by her co-wife's intercourse, whether with this same levir or with one of his brothers; or if the declaration is followed by a geṭ or by ḥălişah, whether to her or to her co-wife, whether from this same levir or from one of his brothers; or if the levir has had intercourse with, or made a verbal declaration concerning, her co-wife, or one of his brothers did so; or if his brother has made his own verbal declaration concerning the same sister-in-law, or had intercourse with her—in all these cases it is called a defective declaration. This applies equally whether the declaration is preceded by any of these actions or is followed by them.

7. How so? For example, if the levir gives a geṭ to his sister-in-law or submits to ḥălişah by her, and then he or his brother makes a verbal declaration concerning her or her co-wife; or if the levir has intercourse with his sister-in-law or makes a declaration concerning her, and then he or his brother makes another declaration concerning her co-wife; or if he makes a declaration concerning his sister-in-law, and then his brother makes his own declaration to her or has intercourse with her—in all these cases both the first and the second declarations are defective.

8. Hence you learn that a verbal declaration preceded or followed by another declaration, a geṭ, ḥălişah, or intercourse is a defective declaration. The only exception is a verbal declaration followed by nothing but intercourse, which is a valid declaration.

9. The act of intercourse performed by the levir with his sister-in-law at the outset, or following his verbal declaration to her, and not preceded by any other act, is called valid intercourse.

If it is preceded by a verbal declaration on the part of his brother, or by a get, whether from him or from his brother, whether to her or to her co-wife, or if it is preceded by a declaration to her co-wife, whether by the levir or by his brother, it is called defective intercourse.

10. The ḥălişah by his sister-in-law to which the levir submits at the outset, if not preceded by any other act, is called perfect ḥălişah.

If it is preceded by a get or a verbal declaration, whether from this levir or from his brother, whether to her or to her co-wife, it is called imperfect ḥălişah.

11. If there are several sisters-in-law in that household, once one of them has valid intercourse with the levir, or performs perfect ḥălişah, all of them become permitted and the levirate tie is removed from them.

If one of them has defective intercourse or receives a defective verbal declaration, all of them are ineligible for levirate marriage, and the one who has had intercourse or has received the declaration requires a get, while each one of them requires ḥălişah to permit her to marry a stranger, because the levirate tie is not removed by inferior intercourse.

12. If one of the sisters-in-law performs an imperfect ḥălişah, she alone becomes permitted to marry a stranger. Her co-wife, however, is not permitted to do so until she too performs ḥălişah, or until all the brothers submit to ḥălişah by their first sister-in-law who had performed the imperfect ḥălişah. For an imperfect ḥălişah does not remove the levirate tie from this household, until the first sister-in-law goes back and performs ḥălişah for all the brothers, or each one of the sisters-in-law performs ḥălişah.

13. In the case of every widowed sister-in-law who has had intercourse with her levir, it does not matter whether the intercourse was valid or defective—even if it took place after he or his brother had submitted to ḥălişah by her—whether its pur-

pose was regular marriage or levirate marriage, even if he has had intercourse with her co-wife after he or his brother had had valid intercourse with herself; she herself requires a geṭ, seeing that the intercourse has made her a married woman.

So, too, every widowed sister-in-law who has received a verbal declaration, whether valid or defective, requires a geṭ on account of the declaration, as we have explained, and only then is the prohibition created by the declaration removed.

14. We have already said that in the case of the widowed sister-in-law a geṭ does not effect a complete severance, nor does a verbal declaration effect a complete acquisition of her, whereas intercourse does effect a complete acquisition, and ḥălişah does effect a complete severance.

Therefore, in her case, one geṭ following another, or one verbal declaration following another, do avail. On the other hand, one act of intercourse after another, or one ḥălişah after another, avail nothing. Similarly, a geṭ or ḥălişah following intercourse are also of no avail.

15. How so? For example, if the levir gives a geṭ to his sister-in-law, and then another geṭ to her co-wife, he is forbidden to marry the relatives of either one of them.

So, too, if two levirs give two geṭs to the same sister-in-law, one after the other, she is regarded as divorced by both of them; therefore both of them are forbidden to marry her relatives, but only one of them must submit to ḥălişah.

Thus also, if the levir gives a geṭ to his sister-in-law, and then his brother gives a geṭ to her co-wife, each levir is forbidden to marry the relatives of the woman divorced by him.

The same applies to one verbal declaration after another, in the manner just explained.

On the other hand, if the levir submits to ḥălişah by his sister-in-law, and then in turn he or his brother submits to ḥălişah by her co-wife, or if two levirs, one after the other, submit to ḥălişah by the same sister-in-law, the second ḥălişah is as nothing, and the brother who has submitted to it is not for-

bidden to marry her relatives, for in his case it is the same as if he had submitted to ḥălişah by any other woman who is not bound to him by levirate tie.

16. Thus also, if the levir has intercourse with his sister-in-law, and then he or his brother submits to ḥălişah by her or by her co-wife, this ḥălişah is as nothing.

So, too, if his brother subsequently gives a get to her or to her co-wife, it is as nothing.

If his brother subsequently makes a verbal declaration to her or has intercourse with her, it counts as nothing, for inasmuch as the levir himself has had intercourse with her first, he has thereby effected a complete acquisition, and betrothal can have no effect upon a woman already married.

If, however, he himself makes a verbal declaration to her co-wife, or has intercourse with her, she must obtain a get from him, as we have explained.

17. If two levirs contract levirate marriage with two sisters-in-law belonging to the same household, and it is not known which one has done so first, both women must be dismissed with a get, after which they are permitted to marry strangers and forbidden to the levirs.

Therefore, if Reuben, who was in Jerusalem, had two wives, one in Acco and one in Tyre, and if his brothers, Simeon in Acco and Levi in Tyre, hear that Reuben is dead, the rule should be that neither of the two brothers should contract levirate marriage until he learns what the other has done, lest the other should forestall him and contract levirate marriage. Therefore, if one of them does nevertheless contract levirate marriage, he need not be compelled to dismiss his wife until it becomes known that the other brother had indeed contracted levirate marriage before him.

If, however, one of the brothers desires to submit to ḥălişah before he learns what the other has done, he need not be restrained from doing so.

18. The intercourse of a minor levir nine years and one day old has the same status as the verbal declaration of an adult levir, in that it does not effect a complete acquisition.

The verbal declaration of a levir nine years and one day old, if made at the outset, is effective, and disqualifies the adult levir. If, however, it is made at the end, it is as nothing.

A minor's get or ḥălişah is likewise as nothing, whether executed at the outset or at the end.

19. How so? For example, if a minor nine years and one day old has intercourse with his sister-in-law or makes a verbal declaration to her at the outset, he renders her ineligible for the other brothers.

If, however, the adult levir makes a verbal declaration to his sister-in-law, and then the minor levir nine years and one day old in his turn makes a declaration to her or to her co-wife, he has done nothing and has not rendered her ineligible for his adult brother.

If the minor levir nine years and one day old has intercourse with his sister-in-law or with her co-wife, subsequent to his adult brother's declaration to her, he renders her ineligible for the adult brother, just like two adults who make one declaration after another, as we have explained.

20. If a levir nine years and one day old has intercourse with his sister-in-law, and then his adult brother has intercourse with her, or submits to ḥălişah by her or by her co-wife, or gives a get to her or to her co-wife, he renders her ineligible for the minor levir.

So, too, if the minor levir thereafter has intercourse with her co-wife, or if his other brother, who is likewise nine years and one day old, has intercourse with her or with her co-wife, the first sister-in-law becomes ineligible for him, just as in the case of one verbal declaration following another.

21. If a levir nine years and one day old has intercourse with his sister-in-law, and if thereafter, having come of age, he has no intercourse with her subsequent to his majority, she requires

a get and ḥălişah: the get, because of his intercourse which is the equivalent of a verbal declaration, and ḥălişah, to permit her to marry a stranger, inasmuch as she was not subjected to intercourse that would have effected a complete acquisition.

If he has intercourse with her after he comes of age, she requires only a get.

22. There is no difference between a male nine years and one day old and one twenty years old who exhibits neither the two hairs of puberty nor the tokens of a eunuch, as we have explained at the beginning of this Book.

23. Although the betrothal of a female minor who is entitled to refusal, and the betrothal of a deaf-mute, are both based only on Scribal law, as we have explained, they nevertheless represent two different categories of betrothal.

A female minor is subject to betrothal, in order that people should not take liberties with her, and her betrothal is held pending until she comes of age. As for the deaf-mute, she was made subject to marriage in order that she should not remain unmarried forever.

Therefore, if all the sisters-in-law belonging to the same household are minors or deaf-mutes, the levir's intercourse with one of them exempts all the rest from the obligation of levirate marriage.

24. If one of the sisters-in-law is a deaf-mute and the other a minor, intercourse with one of the two does not exempt the other.

What then is the remedy for them? The minor sister-in-law should be instructed to declare her refusal, and the levir should then consummate marriage with the deaf-mute. If thereafter he wishes to divorce her, he may, following his intercourse with her, write a get for her, and then she is permitted to marry a stranger.

25. If one of the sisters-in-law is normal and the other a deaf-mute, the levir's intercourse with the normal one, or ḥălişah

by her, exempts the deaf-mute, but his intercourse with the deaf-mute does not exempt the normal one, inasmuch as the deaf-mute's betrothal is valid only on the authority of Scribal law.

The same rule applies to two sisters-in-law one of whom is of age and the other a minor, in that intercourse with the one of age, or ḥălişah by her, exempts the minor, but intercourse with the minor does not exempt the one who is of age.

26. If both sisters-in-law are minors who are entitled to refusal, and if the levir has intercourse with one of them, and then he or his brother has intercourse with the other, he does not thereby make the former ineligible for him. Rather the other sister-in-law should be instructed to declare her refusal, and the levir may then retain the former sister-in-law with whom he had intercourse first.

27. The same rule applies to a minor and a deaf-mute. If the levir has intercourse first with the minor, and then he or his brother has intercourse with the deaf-mute, the minor does not thereby become ineligible for him, while the deaf-mute requires a get, because intercourse with the minor is superior to intercourse with the deaf-mute, seeing that the minor will in due time become fully fit. Therefore he should retain the minor with whom he had intercourse first.

28. If the levir has intercourse first with the deaf-mute, and then he or his brother has intercourse with the minor, the deaf-mute becomes thereby ineligible for him; the minor should therefore be instructed to declare her refusal, while the deaf-mute should be dismissed with a get.

29. If one of the sisters-in-law is normal and the other a deaf-mute, and if the levir has intercourse with the normal one, and then he or his brother has intercourse with the deaf-mute, he does not thereby disqualify the normal one, and the deaf-mute requires a get.

If the levir has intercourse with the deaf-mute, and then he or his brother has intercourse with the normal one, the deaf-mute

becomes thereby disqualified and must be dismissed with a get, while the normal one requires both a get and ḥălişah.

30. If one of the sisters-in-law is of age and the other a minor, and if the levir has intercourse with the one of age, and then he or his brother has intercourse with the minor, the one of age does not thereby become disqualified, and the minor should be instructed to declare her refusal.

If the levir has intercourse with the minor, and if then he or his brother has intercourse with the one of age, the minor should be instructed to declare her refusal, while the one of age should be retained by the respective levir, since intercourse with her has effected a complete acquisition.

CHAPTER VI

1. There are brothers who are eligible for levirate marriage or ḥălişah, and there are brothers who are eligible for neither levirate marriage nor ḥălişah, and are subject to no levirate tie at all, so that their sister-in-law is free at the outset to marry a stranger. There are other brothers who are eligible for ḥălişah but not for levirate marriage, and still others who are eligible for levirate marriage but not for ḥălişah.

2. The following are subject to no levirate tie at all: a congenital eunuch and a hermaphrodite, because they are unable to beget children now and were never able to do so before.

3. The following are eligible for levirate marriage but not for ḥălişah: a deaf-mute, an imbecile, and a minor, because they do not have the intelligence required for ḥălişah.

If a deaf-mute contracts levirate marriage with his sister-in-law, he may never dismiss her, for though his intercourse with her makes her a fully married woman, his divorce does not constitute complete divorce.

A minor nine years and one day old who marries his sister-

in-law may not divorce her until he comes of age, as we have explained.

4. The following are eligible for ḥălişah but not for levirate marriage: a person of doubtful status—for example, a levir whose sister-in-law is his forbidden relative out of doubt—a person crushed or maimed in his privy parts, or subjected to similar forms of castration, or a man so aged that his strength is exhausted and he is impotent.

If a man-made eunuch has intercourse with his sister-in-law, he has acquired her, inasmuch as there was a time when he was potent, but he must dismiss her with a get, seeing that he may not enter the congregation.

A person of doubtful sex may submit to ḥălişah but may not contract levirate marriage, because his status is in doubt. If he is torn open and found to be a male, he may submit to ḥălişah or contract levirate marriage, as he may choose.

All other brothers may either submit to ḥălişah or contract levirate marriage.

5. There are sisters-in-law who are eligible for either ḥălişah or levirate marriage, and there are sisters-in-law who are eligible for neither ḥălişah nor levirate marriage, and are subject to no levirate tie whatsoever, being consequently permitted to marry a stranger.

And there are other sisters-in-law who are eligible for ḥălişah but not for levirate marriage, and still other sisters-in-law who are eligible for levirate marriage but not for ḥălişah.

6. The following sisters-in-law may contract levirate marriage but not perform ḥălişah: a deaf-mute, an imbecile, and a minor, because they do not have the intelligence to recite and to understand.

If the levir wishes to divorce the deaf-mute with a get after his intercourse with her, he may do so.

7. The following sisters-in-law are eligible for ḥălişah but not for levirate marriage: those forbidden by a negative command-

ment, forbidden relatives of the second degree, and those forbidden by a positive commandment, as will be explained.

Any doubtful divorcée is eligible for ḥălişah but not for levirate marriage, lest the levir should thus happen to marry a forbidden relative, since his brother's wife, if definitely divorced by the latter, is prohibited to him as a forbidden relative.

On the other hand, a woman doubtfully betrothed to his brother has the same status as any other sister-in-law, and is eligible for levirate marriage or ḥălişah, because there is no cause here for any apprehension.

So, too, the wife of a deaf-mute, an old woman, or a sterile woman, has the same status as any other sister-in-law, and the levir may submit to ḥălişah or contract levirate marriage, as he may choose, because old and sterile women were once capable of childbearing.

8. The following are exempt from both ḥălişah and levirate marriage: the wife of a congenital eunuch, of a hermaphrodite, of an imbecile, or of a minor, a barren woman, and a woman who is a forbidden relative, because it is said, *that his name be not blotted out of Israel* (Deut. 25:6)—this excludes the congenital eunuch and the hermaphrodite, whose names are already blotted out, and inasmuch as they are congenitally unfit to beget children, they are in a way a class by themselves. *And it shall be that the first-born that she beareth* (*ibid.*) excludes the barren woman, who is congenitally unfit to bear children. *The wife of the dead shall not be married abroad* (Deut. 25:5) excludes the wife of an imbecile or of a minor, both of whom are incapable of matrimony. *And take her to him to wife* (*ibid.*) excludes a forbidden relative, who cannot be acquired in matrimony.

9. How can a sister-in-law be a forbidden relative to her levir? For instance, if she is the sister of his wife, or her mother, or her daughter, she is exempt from both ḥălişah and levirate marriage, and is not bound to him by any levirate tie whatsoever. For it is said, *and take her to him to wife, and perform the duty of a husband's brother unto her* (Deut. 25:5), implying that

only a woman who is fit for acquisition and subject to betrothal is bound to the levir by a levirate tie.

10. If the sister-in-law is forbidden to the levir by a negative or positive commandment, or is his prohibited relative of the second degree, she may perform ḥălişah but may not contract levirate marriage.

Why is she required to perform ḥălişah? Because she is fit for acquisition. All these women, being subject to betrothal, are consequently bound to the levir by the levirate tie. Therefore, according to the rule, they should be subject to levirate marriage, because levirate marriage is enjoined by a positive commandment, and wherever you find a positive and a negative commandment together, the positive commandment supersedes the negative commandment. The Sages, however, have enacted that a woman who is forbidden by a negative commandment or is a prohibited relative of the second degree may not contract levirate marriage, as a precaution, lest the levir should have intercourse with her a second time, which is a forbidden act and is not required by any commandment, because the positive commandment applies to the first act of intercourse only.

Therefore, if the levir transgresses and has intercourse with his sister-in-law who is forbidden to him by a negative or positive commandment, or needless to say, is his forbidden relative of the second degree, he has effected complete acquisition, but must then dismiss her with a get, whereby she and her co-wives become free to marry strangers, having now been released.

11. If a sister-in-law widowed after her nuptials has intercourse with her levir who is a High Priest, her co-wife does not thereby become exempt, inasmuch as a positive commandment cannot override a positive and a negative commandment together.

Therefore, inasmuch as according to the Torah this high priestly levir has not effected complete acquisition, the co-wife may not marry a stranger until the first sister-in-law performs ḥălişah.

12. If the sister-in-law was her husband's forbidden relative—for instance, if he had transgressed or erred by marrying his sister by his father—and now comes before the levir, it follows that she is not the deceased brother's wife, inasmuch as she was not subject to betrothal by him, and is therefore subject neither to levirate marriage nor to ḥălişah.

If she has a co-wife, the latter must perform ḥălişah or contract levirate marriage.

If the sister-in-law was a forbidden relative to her deceased husband, but is not so to the levir, and he is willing to marry her and to contract levirate marriage with her co-wife, he may do so.

13. If the sister-in-law was forbidden to her husband by a negative or positive commandment, or was prohibited to him as a forbidden relative of the second degree, but is not forbidden to the levir for any of these reasons, she may marry the latter. The sole exception is the levir's divorced wife who had subsequently married his deceased brother—she must perform ḥălişah and may not remarry the levir.

So, too, a sister-in-law whose status as a forbidden relative of her levir or of her husband is doubtful, may perform ḥălişah but not marry the levir.

Therefore, if a man betrothes a woman with a doubtful betrothal, and if then his brother, who had married her sister, dies, leaving a widow whose status as the levir's wife's sister is thus in doubt, the widow may perform ḥălişah but not marry the levir. Moreover the levir must then divorce his wife, out of doubt, and thereafter both sisters are forbidden to him: the widow, because of the possibility that she is a forbidden relative, and his spouse, because of the possibility that she is a relative of the woman who had performed ḥălişah for him, and is therefore the same as a forbidden relative of the second degree, as we have explained.

14. If the levir's brother dies leaving two wives, one of them prohibited to the levir as a forbidden relative, and the other not

so forbidden, the rule is that just as the one is exempt from both ḥălişah and levirate marriage, so is her co-wife exempt, and thus the levir has no levirate tie whatsoever to this household. For it is said, *that doth not build up his brother's house* (Deut. 25:9), implying that the levirate tie applies to the household where the levir may acquire any one of the wives he chooses, whereas in a household where he cannot rebuild one part of it inasmuch as he cannot acquire one of the wives, he may not rebuild even that part which is permitted to him. Hence it follows that the co-wife of a forbidden relative is herself a forbidden relative as his brother's wife, since he is not bound to her by a levirate tie.

15. Therefore, if Reuben dies leaving two wives, one of whom is a forbidden relative of his brother Simeon, but both of whom are fit for his other brother Levi, Simeon has no levirate tie to this household, while both wives are under levirate tie to Levi.

If Levi thereupon marries the co-wife of Simeon's forbidden relative in addition to his previous wife, and then dies, so that both these sisters-in-law come before Simeon, they are both exempt from ḥălişah and levirate marriage as far as Simeon is concerned: the former, because she was the co-wife of a forbidden relative, and the latter, because she is the co-wife of the first.

The same rule applies to the co-wife's co-wife, and so forth, unto the end of the world, because any woman not bound by a levirate tie retains forever the prohibited status of the brother's wife.

16. The same applies to the wife of one's noncontemporaneous brother, since one has no levirate tie with her, for it is said, *If brethren dwell together* (Deut. 25:5), implying that they must dwell contemporaneously in this world. She therefore retains the status of a forbidden relative as his brother's wife forever, and exempts also her co-wife.

17. How so? For example, if Reuben dies leaving a wife, who thus becomes subject to levirate marriage to Simeon, and if

after Reuben's death Levi is born, Reuben's wife remains forever Levi's forbidden relative, whether Levi was born before or after Simeon married her.

Therefore, if Simeon dies and this woman and her co-wife come before Levi, both are exempt from ḥălişah and levirate marriage.

18. If Simeon makes a verbal declaration to his sister-in-law, the widowed wife of Reuben, but dies before consummating the marriage, Levi must submit to ḥălişah by her co-wife and may not marry her, because a verbal declaration does not effect a complete acquisition of the sister-in-law, as we have explained.

19. If a married woman, while under her husband, plays the harlot willfully and before witnesses, and if her husband dies prior to divorcing her, so that she comes before her levir, she is exempt from both levirate marriage and ḥălişah. Her co-wife likewise is the same as the levir's forbidden relative, because the term "defilement" applies to the sister-in-law the same as it does to forbidden relatives, as it is said, *she being defiled* (Num. 5:13).

A wayward woman, however, whose husband dies before making her drink bitter water, or who is ineligible to drink the bitter water but is subject to divorce, must perform ḥălişah, but may not contract levirate marriage.

If she has a co-wife, the latter is permitted to the levir, and may either perform ḥălişah or marry him.

20. Similarly, if one of two sisters-in-law from the same household is the levir's forbidden relative of the second degree, or is prohibited to him by a negative or positive commandment, or is a barren woman, her co-wife is permitted to him, and may either perform ḥălişah or marry him.

If, however, the levir submits to ḥălişah by his sister-in-law, and thereupon her sister, mother, or similar near kinswoman, marries his other brother who already has another wife; and if this brother then dies, so that both these wives come before the

levir, it follows that just as the relative of the sister-in-law who had performed ḥălişah for him is forbidden to him, so is her co-wife forbidden to him, since both are the same as his forbidden relatives of the second degree, and are consequently eligible for ḥălişah but not for levirate marriage.

And why was it forbidden for a levir to marry the co-wife of a relative of the sister-in-law who had performed ḥălişah for him? Because she might be confused with the co-wife of the sister-in-law who had performed ḥălişah for him.

21. If one of two sisters-in-law from the same household is the levir's forbidden relative, but is also a barren woman, her co-wife is permitted to him and is eligible for either ḥălişah or levirate marriage. For inasmuch as a barren woman is eligible for neither levirate marriage nor ḥălişah, it is as if she did not exist, and the levirate tie therefore falls upon her co-wife alone.

Similarly, if the deceased had, before his death, divorced the aforesaid forbidden relative, or if she had declared her refusal of him, or if she had died before he did, her co-wife is permitted to the levir and is eligible for either ḥălişah or levirate marriage, and it cannot be said that having been the co-wife of a forbidden relative for one moment she must remain forbidden forever, because a co-wife is forbidden only if she is the co-wife of a forbidden relative at the time when levirate marriage falls due.

22. If this sister-in-law who is the levir's forbidden relative was doubtfully betrothed to the deceased, or doubtfully divorced from him, or is a minor who, though eligible to exercise the right of refusal, did not exercise it during the deceased's lifetime—even if she does exercise it against the levir—her co-wife must perform ḥălişah and may not contract levirate marriage.

23. If the co-wife of the forbidden relative goes forth and marries a stranger, and if subsequently the forbidden relative is found to be a barren woman, the co-wife must be dismissed by both her husband and her levir, and thus requires a get from her husband and ḥălişah from her levir, in order to make her permitted to anyone else.

24. If the levir marries the co-wife under the impression that the forbidden relative is a barren woman, and if the latter is subsequently found not to be barren, the co-wife must be dismissed by the levir with a get, and the child born of this woman is accounted a bastard.

25. In the case of three brothers, A and B married to two sisters, and C to an unrelated woman, if C dies first, and then either A or B dies next, C's widow must perform ḥălişah and may not marry the surviving levir, because she is the co-wife of his wife's sister by virtue of the levirate tie that existed between her and the brother who died last.

Moreover, even if A or B divorces his wife after C's death, and then he too dies, C's wife must still perform ḥălişah and may not marry the surviving levir, inasmuch as she has been for a while the co-wife of his wife's sister. For should she be allowed to contract levirate marriage, the surviving levir might come to marry her even when the brother who died last had not divorced his wife.

26. And why was such a precautionary measure not enacted in the case of a co-wife by actual marriage, seeing that if a man married to the levir's forbidden relative divorces her and then dies, her co-wife is permitted to the levir, as we have explained? Because the prohibition of the co-wife of a forbidden relative by actual marriage is known to all, and no one would come to permit levirate marriage to such a co-wife unless the forbidden relative had been divorced first. The prohibition of the co-wife of a forbidden relative by levirate tie alone, on the other hand, is not known to all, and people might come to permit such a co-wife even if the forbidden relative had not been divorced beforehand.

27. If three brothers are married to three women not related to each other, and one of the brothers dies, and if the second brother makes a verbal declaration to the widow, but dies before consummating the marriage, so that both widows now come before the surviving levir, they must perform ḥălişah, and

may not contract levirate marriage. For the widow who has received the verbal declaration is now bound by levirate tie to two levirs, so that it is as if she were the wife of both deceased brothers, and the Sages have interpreted the phrase *the wife of the dead* (Deut. 25:5) to signify the wife of one deceased man, not the wife of two deceased men.

Therefore, any woman bound by levirate tie to two levirs must perform ḥălişah, and may not contract levirate marriage, and the same applies to her co-wife. The prohibition of marrying such sisters-in-law is based on Scribal law.

28. But why should not the levir submit to ḥălişah by the widow who had received the verbal declaration and is thus bound by levirate ties to two levirs, and then marry her co-wife? This is forbidden as a precaution, lest people should say, "Here are two sisters-in-law who come from the same household, and yet one must perform ḥălişah, while the other may contract levirate marriage!" That is why her co-wife was also forbidden.

29. If the second brother makes a verbal declaration to his sister-in-law, then gives her a get releasing her from it, and then dies, she is thereby restored to her former permitted status, inasmuch as the declaration which had made her forbidden has been voided. Consequently, the third surviving levir may submit to ḥălişah by her or marry her, as he may choose.

30. If a minor nine years and one day old has intercourse with his sister-in-law, and then dies while still a minor, so that she comes for the second time before his older brother, she must perform ḥălişah and may not contract levirate marriage. For the intercourse of a minor nine years and one day old has the same status as the verbal declaration of an adult, as we have explained, hence she is bound by levirate tie to two levirs.

31. If a woman half-slave and half-free is first betrothed to Reuben, and then emancipated and betrothed to Simeon, and if then both brothers die, she is eligible for levirate marriage to Levi, and is not considered the widow of two deceased men.

For if Reuben's betrothal is valid, Simeon's betrothal is as nothing, and conversely, if Simeon's betrothal is valid, Reuben's betrothal is as nothing.

CHAPTER VII

1. If two brothers married to two sisters die, and it is not known which one died first, both widows must perform ḥălişah and may not contract levirate marriage, inasmuch as it is impossible for the surviving levir to marry them both, and yet both are subject to the levirate tie.

Even if one of the widows is the levir's forbidden relative of the second degree, or is prohibited to him by a positive or negative commandment, both must still perform ḥălişah and may not contract levirate marriage.

If, however, one of the two widows is his forbidden relative—for instance, his wife's mother or daughter—her sister is permitted to him, and he may submit to ḥălişah by her or marry her, as he may choose, inasmuch as the levirate tie does not apply to both sisters, since a forbidden relative is not subject to the levirate tie.

2. If one of the two sisters is prohibited to one levir as his forbidden relative, and the other sister is prohibited to the other levir for the same reason, the sister forbidden to the one levir is permitted to his brother, and the sister forbidden to the other levir is permitted to his brother. For the levirate tie of each levir rests only upon the woman who is permitted to him, and therefore he may submit to ḥălişah by that sister who is permitted to him, or marry her, as he may choose.

3. If one of the brothers dies, and his wife becomes subject to levirate marriage, and if then the second brother dies, and his wife, who is the sister of the first brother's wife, also becomes subject to levirate marriage, both wives being among

the living, both must perform ḥălişah and may not contract levirate marriage, as we have explained.

4. If the second sister dies, the first one reverts to her status of permissibility, and may perform ḥălişah or contract levirate marriage.

If the first sister dies, the second retains her forbidden status, and must therefore perform ḥălişah; she may not contract levirate marriage, because she was ineligible for it when it fell due.

So, too, if one of the brothers acts first and submits to ḥălişah by the second sister, the first sister becomes thereby permitted to the other brothers, because the levirate tie that made her forbidden has now been removed by that brother's ḥălişah.

5. So, too, if the first sister is a forbidden relative of one of the levirs, and he acts first and marries the second sister who is permitted to him, the first sister becomes permitted to the other brothers, because the second sister, who had made her forbidden to them, has now contracted levirate marriage with the levir to whom she was permitted.

If, however, it is the second sister who is prohibited to only one of the brothers as his forbidden relative, that brother may marry the first sister, but the other brothers are forbidden to both sisters; they must therefore submit to ḥălişah, and may not contract levirate marriage, as we have explained.

If they act first and each brother marries one of the sisters, they must be made to dismiss them.

6. In the case of three brothers, A, B, and C, A and B married to two sisters, if A dies, and C makes a verbal declaration to his wife, and if then B, too, dies, and his wife also comes before C, the latter must both give a get to A's widow, to whom he had made a verbal declaration, and submit to ḥălişah by her, and must also submit to ḥălişah by B's widow, in order to make it permissible for both of them to marry strangers.

7. If C, who had made a verbal declaration to A's widow, dies, leaving also another wife, so that both C's widows came

before B, A's widow, who has received the declaration, is exempt from both ḥălişah and levirate marriage, inasmuch as she is B's wife's sister. C's other widow, however, must perform ḥălişah and may not contract levirate marriage, because a verbal declaration does not effect a complete màrital acquisition, to the extent of making the co-wife exempt also.

8. If one of the levirs has betrothed the sister of his widowed sister-in-law, he should be told, "Wait—neither divorce her nor wed her—until your brother either marries this sister-in-law, who is bound by levirate tie to all of you, or submits to ḥălişah by her."

If his brother submits to ḥălişah by her or marries her, or if she dies, the levir may consummate the marriage with his spouse.

If all his brothers die, he must dismiss his spouse with a get and his sister-in-law with ḥălişah.

If his spouse dies, whether before the death of the brothers or after, the sister-in-law reverts to her permitted status, and the levir may submit to ḥălişah by her or marry her, as he may choose.

9. In the case of three brothers, two married to two sisters, each of the sisters having a co-wife, if the two brothers married to the two sisters die, and both the sisters and their co-wives come before the surviving brother, the rule is as follows: If the surviving brother submits to ḥălişah by the co-wives, the sisters are exempt; but if he submits to ḥălişah by the sisters, the co-wives do not thereby become exempt and must themselves perform ḥălişah. For the ḥălişah of the sisters is an imperfect ḥălişah, and an imperfect ḥălişah does not exempt the co-wife, as we have explained.

10. It would appear to me that the rule is the same for two sisters-in-law who come from the same household, and one of whom is prohibited to the levir as his forbidden relative of the second degree, or is forbidden to him by a positive or negative commandment; that is, if the levir submits to ḥălişah by the sister-in-law forbidden to him, her co-wife does not thereby

become permitted; if he submits to ḥălişah by the latter, the former, heretofore forbidden to him, becomes permitted.

11. In the case of three brothers, A, B, and C, A and B married to two sisters, and C married to a woman who is not related, if A dies, and C marries his widow; and if then B's wife dies, and thereupon C also dies, so that both wives of C come before B, who is now wifeless, they are exempt from both ḥălişah and levirate marriage; the one, because when A died she was forever forbidden to B as his wife's sister, on the analogy of the wife of a noncontemporary brother; and the other, unrelated to the sisters, as her co-wife.

12. Similarly, if two brothers, A and B, are married to two sisters, and if A dies, and then B's wife also dies, A's widow is forever forbidden to B, because she became forbidden to him the moment levirate marriage fell due.

If, however, a man first divorces his wife, then remarries her, and then dies, she is permitted to the levir. For even though she had become forbidden to him for the duration of his brother's life the moment the latter divorced her, she has subsequently reverted to her permitted status, and at the moment of his brother's death was still in possession of that status.

13. If a minor girl is given in marriage by her father, and her husband first divorces her, then remarries her, and then dies, while she is still a minor, she is forbidden to the levir, because her divorce was complete, inasmuch as it was her father who had given her in marriage, while her marriage was incomplete, since the betrothal of a minor girl is not a complete betrothal, as we have explained.

14. The same rule applies to a man who divorces a normal woman, and then, upon her becoming a deaf-mute, remarries her, and dies, while she remains a deaf-mute: she is forbidden to the levir, and need neither perform ḥălişah nor contract levirate marriage.

The co-wife of such a minor or deaf-mute may perform ḥălişah or contract levirate marriage.

If, however, the husband remarries the minor or the deaf-mute, and she abides with him until she comes of age or regains her senses, and if he then dies, she is permitted to her levir.

15. In the case of two brothers married to two sisters, if both sisters are minors eligible to exercise the right of refusal, or are deaf-mutes, and if one of the brothers dies, his widow is exempt from both ḥălişah and levirate marriage as the levir's wife's sister.

If one of the sisters is of age and the other a minor, and the husband of the minor dies, his widow is likewise exempt from both ḥălişah and levirate marriage as the sister of the levir's wife.

If the husband of the adult sister dies, the minor sister should be instructed to declare her refusal of her husband, whereupon her sister becomes permitted to her levir.

16. If two deaf-mute brothers are married to two normal or deaf-mute sisters, or if one of the sisters is normal, and the other a deaf-mute; and similarly, if two deaf-mute sisters are married to two normal or deaf-mute brothers, or if one of the brothers is normal and the other a deaf-mute; and if one of the brothers dies, his widow is exempt from both ḥălişah and levirate marriage as the sister of the levir's wife, inasmuch as neither of these two marriages is a complete marriage.

17. If two brothers, one normal and the other a deaf-mute, are married to two sisters, both normal, or one normal and the other a deaf-mute, the normal brother being married to the normal sister, the rule is as follows: If the deaf-mute brother dies, his widow is exempt as the sister of the levir's wife. If the normal brother dies, then, inasmuch as his marriage is a complete marriage, and the levirate tie of the deaf-mute brother is therefore also complete, while the latter's marriage is not complete, the deaf-mute must dismiss his wife with a get, because of her sister's levirate tie to him, while his normal brother's widow is forbidden forever, because he can neither marry her because of

her sister, nor submit to ḥălişah by her, inasmuch as he is a deaf-mute.

18. And why did the Sages decree that the deaf-mute must dismiss his deaf-mute wife, notwithstanding that both of them are not obligated to observe the commandments, but are like minors who eat of *nĕḇelah,* whom the court is not commanded to restrain? The Sages have said: Should his wife continue to abide with him, her sister might marry a stranger, and people might then say that she was exempted as the sister of the levir's wife. He must, therefore, dismiss his wife with a get, so that her sister would become forbidden forever.

19. So too, in the case of two normal brothers married to two sisters, one normal and the other a deaf-mute, if the husband of the deaf-mute dies, she is exempt as the sister of the levir's wife.

If the husband of the normal sister dies, the levir must dismiss his deaf-mute wife with a get and his sister-in-law with ḥălişah, because being normal, he is capable of ḥălişah.

20. In the case of two brothers, one normal and the other a deaf-mute, if the deaf-mute has two wives, both normal, but one of them his normal brother's forbidden relative, and if the deaf-mute dies, both his widows are in any case exempt. For if the marriage of the widow who is a forbidden relative is valid, the other widow is her co-wife, and therefore exempt; if the marriage of the former is invalid, the co-wife's marriage is equally invalid.

21. If a normal man's daughter, or a similar close relative, is a deaf-mute and is married to his normal brother, her co-wife must perform ḥălişah and may not contract levirate marriage, because a deaf-mute's marriage is not a complete marriage.

22. Wherever in these rules we have said "two sisters"—which applies equally to two sisters, or a woman and her daughter, or a woman and her daughter's daughter, or similar relationships—

the term signifies two women so related that one of them is a forbidden relative when paired with the other, so that a man cannot marry both of them without being guilty of marrying a forbidden relative.

Thus also, wherever we have said "his wife's sister" or "the sister of his sister-in-law"—which applies equally to her sister, or her mother, or her daughter—the term signifies one of her relatives who would constitute a forbidden relative if paired with her.

CHAPTER VIII

1. If a man betrothes one of two sisters but does not know which one, and then dies leaving a brother, that brother must submit to ḥălişah by both sisters, in order to make them permitted to marry other men.

If the deceased is survived by two brothers, one of them must first submit to ḥălişah by one of the sisters, whereupon the other brother may in any case marry the second sister. For if this second sister is the one that the deceased had betrothed, the other brother has lawfully contracted levirate marriage with her, and if she is not, it is the same as if he had married any other woman, inasmuch as her sister, who in that case was his late brother's wife, has already performed ḥălişah.

None of the brothers, however, should at the outset contract levirate marriage with one of the sisters, lest the other sister should turn out to be his brother's widow, and he would thus have married the sister of the woman who was bound by levirate tie to him.

If both brothers act first and contract levirate marriage with the two sisters-in-law, they need not be made to dismiss them.

2. If two men who have betrothed two sisters, neither of them knowing which one it was, die, each leaving a brother, each brother must submit to ḥălişah by both sisters.

If one of the deceased husbands is survived by one brother, and the other by two, the rule is as follows: First the sole brother must submit to ḥălişah by both sisters; then one of the two brothers must submit to ḥălişah by one sister, whereupon the other brother may contract levirate marriage with the other sister.

If the two brothers act first and consummate marriage with the two sisters, they need not be made to dismiss them, even if the two brothers are priests. For on the one hand, the ḥălişah to which the sole brother has submitted was based on a doubt; on the other hand, a woman who has performed ḥălişah is forbidden to a priest by Scribal law only, and moreover this enactment was not made to apply to a woman who was only doubtfully subjected to ḥălişah.

3. If each of the two deceased husbands, A and B, is survived by two brothers, the rule is as follows: One of A's brothers must submit to ḥălişah by one of the sisters, and one of B's brothers must submit to ḥălişah by the other sister. Then A's other brother may marry the sister who had performed ḥălişah for B's first brother, and B's other brother may marry the sister who had performed ḥălişah for A's first brother.

If the two brothers of A act first and submit to ḥălişah by both sisters, B's brothers may not both contract levirate marriage; rather, one of them must submit to ḥălişah by one sister, and only thereafter may the other marry the other sister. If, however, they act first and consummate the two marriages, they need not be made to dismiss their wives.

4. If a woman and her daughter-in-law, both having sons, conceive and give birth in the same secret place to one more son each; and if these two children, having been confused with each other, grow up with the confusion unresolved, take wives, and die, how are their wives to be made permitted to remarry?

First, the daughter-in-law's other sons must submit to ḥălişah by both widows, and may not marry them, because there is doubt about each widow—whether she is the son's sister-in-law,

and therefore permitted to him, or his father's brother's wife, and therefore his forbidden relative.

The mother-in-law's sons, however, may either submit to ḥălişah or contract levirate marriage. For if the widow is indeed the son's sister-in-law, he has duly contracted levirate marriage with her; if, on the other hand, she is the wife of his brother's deceased son, she is now allowed to marry him, since she has already performed ḥălişah.

5. If the assured sons of the mother-in-law and of the daughter-in-law are dead, while the confused sons are living, the rule is as follows: The confused sons must submit to ḥălişah by the widows of the mother-in-law's sons, and may not marry them, because in the case of each confused son there is doubt about the widow whether she is his father's brother's wife, and therefore his forbidden relative, or his brother's wife, and therefore permitted in levirate marriage to him.

As for the widows of the daughter-in-law's sons, one of the confused sons must first submit to ḥălişah, whereupon the other son may contract levirate marriage in any case. For if the one who has submitted to ḥălişah is the daughter-in-law's son, he has duly submitted to ḥălişah by his sister-in-law, while the other confused son is the mother-in-law's son, who is permitted to marry the widow of his brother's son after she had performed ḥălişah for her levir.

On the other hand, if the confused son who has submitted to ḥălişah is the mother-in-law's son, he has in fact submitted to ḥălişah by the widow of his brother's son, and thus performed an act of no validity whatsoever, while the other confused son is the daughter-in-law's son, and has duly contracted levirate marriage with his sister-in-law.

6. If a widow, without waiting for three months after her husband's death, remarries and gives birth to a male child, and it is consequently not known whether it is a nine months' child by the first husband or a seven months' child by the second husband, and if she has other sons by both husbands, the rule, if

this doubtful son dies, is as follows: The sons of both the first and the second husband must submit to ḥălişah by the widow of the doubtful son, and may not marry her. For each one of them, while he may not be the doubtful son's paternal brother, is surely his maternal brother, and the widow of his maternal brother is forever prohibited to him as his forbidden relative.

Similarly, this doubtful son must submit to ḥălişah by his assured brother's wives, and may not contract levirate marriage with them.

7. If both husbands have each a son by a wife other than the one who has remarried within the waiting period, and one of these sons dies, the doubtful son may either submit to ḥălişah by the widow or marry her. For if the deceased was his paternal brother, he has duly contracted levirate marriage with his widow; and if the deceased was not his paternal brother, there is no brotherhood between them whatsoever, and he is therefore surely allowed to marry the deceased's widow.

8. If the doubtful son dies, one of the assured sons must first submit to ḥălişah by the widow, whereupon the other may contract levirate marriage with her in any case. For if he is the deceased's paternal brother, he has duly contracted levirate marriage with his widow; and if he is not the deceased's paternal brother, but is rather the child of the other father, the widow has already performed ḥălişah for her husband's brother.

9. If a woman whose husband had gone to another country hears that he is dead, and thereupon remarries, and if thereafter the first husband returns, and then both husbands die and are survived by brothers, the brother of each must submit to ḥălişah by the widow, and may not contract levirate marriage with her.

10. If five women, each having an assured son, betake themselves jointly to the same secret place and there give birth to five other sons, who then become confused with each other; and if these confused sons grow up, take wives, and die, so that their widows come before the five assured sons, none of whom

knows which widow is his deceased brother's wife, what is the remedy for them?

First, four of the sons must submit to ḥălişah by one of the widows, whereupon the fifth son may marry her, who has thus performed ḥălişah four times, in any case.

11. How so? If this widow is indeed his deceased brother's wife, he has duly contracted levirate marriage with her. If she is not his deceased brother's wife, she is the wife of the brother of one of the other four sons, and all four of them have already submitted to ḥălişah by her.

The same procedure is followed with the second widow. Four of the sons, including the one who has married the first widow, must submit to ḥălişah by her, whereupon the fifth son may marry her. This procedure is followed further until all five sons will have married all five widows, after each of them has performed ḥălişah four times.

12. You must always, in all these doubtful cases, take care to be guided by these fundamental principles: Whenever you are in doubt as to whether a woman is or is not obligated to perform ḥălişah for a certain man, she is not permitted to marry a stranger until that man submits to ḥălişah by her. And whenever you are in doubt as to whether this woman is or is not forbidden to have intercourse with this man, whether by authority of the Torah or of Scribal law, she may not contract levirate marriage with him. And any woman who has performed a perfect ḥălişah for, or has had lawful intercourse with, her levir, renders her co-wife permitted to marry a stranger.

13. In this manner you must interpret and render decisions in all doubtful cases that may occur in matters touching levirate marriage and ḥălişah, according as we have explained all the principles you are to rely upon, so that you may know which man must submit to ḥălişah, which man must contract levirate marriage, which woman is exempt from both ḥălişah and levirate marriage, and which woman is eligible for levirate marriage.

TREATISE IV

LAWS CONCERNING A VIRGIN MAIDEN

Involving Five Commandments,
Three Positive and Two Negative
To Wit

1. To fine the seducer.
2. That the violator shall marry the violated.
3. That he shall not divorce her.
4. That the wife of the man who has issued an evil report shall abide with him forever.
5. That he who has issued an evil report shall not divorce his wife.

An exposition of these commandments is contained in the following chapters.

NOTE

In the list of 613 commandments prefixed to the Code, those dealt with in the present treatise appear in the following order:

Positive commandments:

[1] 220. To fine the seducer fifty shekels, etc., as it is said: *And if a man entice a virgin . . . he shall pay money according to the dowry of virgins* (Exod. 22:15–16).

[2] 218. That the violator shall marry the violated, as it is said: *and she shall be his wife, because he has humbled her* (Deut. 22:29).

[4] 219. That the wife of the man who has issued an evil report shall abide with him forever, as it is said: *she shall be his wife . . . he may not put her away all his days* (Deut. 22:19).

Negative commandments:

[3] 358. That the violator shall not divorce the violated, as it is said: *he may not put her away all his days* (Deut. 22:29).

[5] 359. That he who has issued an evil report shall not divorce his wife, as it is said: *he may not put her away all his days* (Deut. 22:19).

CHAPTER I

1. He who seduces a virgin must be fined the weight of fifty sela' of refined silver. This is called "fine" (*ḳĕnas*). The same applies to one who violates a virgin.

This fine is required by a positive commandment of the Torah, for it is said, *The man that lay with her shall give unto the damsel's father fifty shekels of silver* (Deut. 22:29).

2. Who is a seducer, and who is a violator? A seducer acts with the victim's consent; a violator has intercourse with her against her will.

A woman subjected to intercourse in the open field is presumed to have been violated, and is subject to the rule governing violation, until witnesses testify that she had indeed submitted to intercourse of her own will.

A woman subjected to intercourse in the city is presumed to have been seduced, inasmuch as she did not cry out, until witnesses testify that she was indeed violated, as for instance, that the man had drawn his sword and said to her, "If you cry out, I will slay you."

3. If the seduced refuses to marry her seducer, or if her father refuses to give her in marriage to him, or if the seducer refuses to consummate the marriage, the latter may pay the fine and go his way—he may not be compelled to consummate the marriage.

If an agreement is reached, and the seducer consummates the marriage, he need not pay the fine, and must only write a kĕṯubbah for her, as he would for any other virgin.

If a violated woman refuses to marry her violator, or if her father refuses to give her in marriage to him, they may do so, and the violator may then pay the fine and go his way.

If she and her father consent to the marriage, but the violator does not, he must be compelled to do so; he must consum-

mate the marriage, and pay the fine as well, for it is said, *and she shall be his wife* (Deut. 22:29), which is a positive commandment.

Even if she is lame, or blind, or leprous, he must be compelled to consummate the marriage, and may not dismiss her of his own will forever after, as it is said, *he may not put her away all his days* (*ibid.*), which is a negative commandment.

4. Such a woman needs no kĕṯubbah, because the Sages have instituted the kĕṯubbah for a woman only in order that she might not seem light in her husband's sight to dismiss her, whereas the violator may not dismiss the violated.

5. If the violated woman is forbidden to the violator, even if only by a positive commandment, or even if she is only his forbidden relative of the second degree, he may not marry her.

Similarly, if after he has consummated the marriage, there is found a matter of unchastity concerning her, he must divorce her, for it is said, *and she shall be his wife* (Deut. 22:29), meaning, if she is fit to be his wife.

6. A High Priest who violates a virgin or seduces her may not consummate the marriage, because he is commanded to marry a virgin, whereas this one is no longer a virgin at the time when he is about to marry her. If he does consummate the marriage, he must dismiss her with a geṭ.

7. Even though in the case of the violator it is said, *he may not put her away* (Deut. 22:29), nevertheless, inasmuch as this negative commandment is preceded by a positive commandment, *and she shall be his wife* (*ibid.*), the result is that the negative commandment is transformed into the positive one, and the rule is that a negative commandment transformed into a positive commandment involves no punishment of lashes, except when the transgressor also fails to perform the positive commandment, as will be explained in the Laws Concerning the Sanhedrin.

Therefore, if the violator transgresses and does divorce the

violated, he must be compelled to take her back, and is then free from the punishment of lashes. If his divorced wife dies before he has taken her back, or is betrothed to another man, or if the violator is a priest and is therefore forbidden to marry a divorcée, he must submit to lashes, inasmuch as he has transgressed the negative commandment, and yet cannot perform the positive commandment, applicable to his wife.

8. The violator or seducer is not liable to a fine unless he has intercourse with the girl in a normal manner, before witnesses, and no warning is necessary.

At what age does a girl make a man liable to a fine? From the age of three full years until she comes of age. If she has intercourse within these three years, it is not considered intercourse. If he has intercourse with her after she has come of age, she is not entitled to the fine, for it is said, *a damsel that is a virgin* (Deut. 22:28), not one who has come of age. And whether the girl has a father or not, she is entitled to the fine.

9. The following are not entitled to the fine: a woman who is of age, a girl who has exercised her right of refusal, a barren woman, an imbecile, a deaf-mute, a woman known since her childhood to be of ill repute, with two witnesses testifying that she had requested them to engage in harlotry with her, and a woman who, though divorced after marriage, is still in fact a virgin maiden.

If, however, a woman divorced after espousal is violated, the violator is liable to a fine, and the fine accrues to herself. If she is seduced, she is not entitled to the fine.

10. A female proselyte, a woman held in captivity, or a freedwoman, if proselytized, redeemed, or emancipated when three years old or less, is entitled to the fine.

If she is three years and one day old when proselytized, redeemed, or emancipated, she is not entitled to the fine, for inasmuch as intercourse with such girls is valid, they are accounted nonvirgins.

11. If this virgin is forbidden to the violator or seducer, the rule is as follows: If she is forbidden to him on penalty of excision—for instance, if she is his sister or aunt, or is menstruating, or the like—or if she is forbidden by a negative commandment, and if he was warned, he is liable to lashes but not to a fine, for no man may be both lashed and fined. If there was no warning, he must pay the fine, inasmuch as he is not liable to lashes.

12. If she is forbidden to him by a positive commandment, or is his forbidden relative of the second degree, or the like, prohibited only on the authority of the Scribes, he is liable to a fine, whether he was warned or not, inasmuch as in such a case he is not liable to lashes.

13. If she is forbidden to him on penalty of death at the hands of the court—for instance, if she is his daughter, his daughter-in-law, or the like—he is exempt from the fine, whether he was warned or not. For it is said, *if . . . no harm follow, he shall be surely fined* (Exod. 21:22), implying that if harm does follow, there is no fine.

Even though the slaying of the woman referred to in this verse is accidental, since the striving men had not intended to kill her, as it is said, *And if men strive together, and hurt a woman* (Exod. 21:22), yet you learn that Scripture does not differentiate between intentional and unintentional harm, to the extent of exempting the latter from payment of a fine. For it is said, *And he that smiteth a beast mortally shall make it good* (Lev. 24:18), *and he that killeth a man shall be put to death* (Lev. 24:21)—just as in the killing of a beast Scripture does not distinguish between an intentional and an unintentional killer, insofar as payment of a fine is concerned, so also in homicide Scripture does not differentiate between an intentional and an unintentional slayer in regard to exemption from the payment of a fine.

14. The same rule applies to all transgressions punishable by

death at the hands of the court—they are exempt from payment of a fine.

15. If the man has intercourse with his victim, and she then dies, he is exempt from the fine, for it is said, *then the man that lay with her shall give unto the damsel's father fifty shekels* (Deut. 22:29)—not "unto the dead damsel's father"—provided that she dies before she appears in court.

CHAPTER II

1. The fine of fifty silver shekels constitutes payment for the enjoyment of the intercourse alone. The seducer must also pay, in addition to this fine prescribed by the Torah, compensation for the humiliation and the blemish. The violator must pay, in addition to all these, compensation for the pain, for a woman who submits to intercourse willingly suffers no pain, whereas if she is violated she does suffer pain. Hence it is said of the violated, *because he has pained her* (Deut. 22:29).

2. It follows therefore that the seducer must pay three kinds of penalties, the fine, compensation for the humiliation, and compensation for the blemish; while the violator must pay four, the fine, compensation for the humiliation, compensation for the pain, and compensation for the blemish.

3. The fine is the same for all women: whether a man has intercourse with the daughter of a High Priest, or with the daughter of a proselyte, or with the daughter of a bastard, the fine for her is fifty silver shekels.

On the other hand, compensation for the humiliation, for the blemish, and for the pain is not the same for all women, and requires assessment.

4. How is compensation for the humiliation to be assessed? It all depends on the status of him who has inflicted the humili-

ation and of her who has been subjected to it, for there is no comparison between him who humiliates an esteemed maiden of distinguished family and him who humiliates a girl of poor and humble family. Nor is there any comparison between one who is humiliated by an important and eminent man and one who is humiliated by an ignoble and utterly worthless man.

5. The judges must therefore consider the status of the man and of the girl involved, and assess the amount the girl's father and her family would have paid to prevent such a thing from happening to them at the hand of this man, who must then pay the equivalent of such a sum.

6. Compensation for the blemish is assessed according to the girl's beauty. The judges must therefore consider her as if she were a bondswoman being sold in the market place, and must estimate her value as a nonvirgin as against her value as a virgin. For a man would ordinarily prefer to purchase a virgin bondswoman in order to give her to his slave whom he wishes to benefit and please. The judges must thus determine the amount of her deterioration in value, and the offender must pay accordingly.

Compensation for the pain depends upon the tender age of the girl and the structure of her body, as well as upon the age of the offender and the structure of his body. The judges must thus estimate the amount the father would have paid to prevent his daughter from being hurt by this man, and the latter must pay this amount.

7. The seducer must pay compensation for the humiliation and the blemish immediately, but need not pay the fine unless he fails to marry the seduced, for it is said, *If her father utterly refuse to give her unto him, he shall pay money* (Exod. 22:16).

The violator, however, must immediately pay all four kinds of penalties, and must then consummate the marriage.

Therefore, if the violated wishes to be divorced, or is widowed, she has no claim to anything whatsoever.

8. If two men, A and B, have intercourse with the same girl, A in a natural manner and B unnaturally, the rule is as follows: If B was first, he must pay compensation for the humiliation and for the blemish; if he was last, he must pay only for the humiliation, inasmuch as the girl was already blemished. As for A, he must pay the fine and the other penalties, whether he was first or last, but the compensation for the humiliation and for the blemish is not the same for a woman who has never had intercourse before and for a woman who has been subjected to unnatural intercourse.

9. We have already enumerated the women who are not entitled to the fine, namely ten in all: a girl who is of age, a minor female who has declared her refusal, a divorcée, a barren woman, an imbecile, a deaf-mute, a female proselyte, a female captive, an emancipated bondswoman, and a woman of ill repute. All other women are entitled to the fine.

10. Any girl who is entitled to the fine is also entitled to compensation for the humiliation and for the blemish, and if she is violated, to compensation for the pain as well. And any girl who is not entitled to the fine is not entitled to compensation for the humiliation and for the blemish, if she is either seduced or violated, with the exception of the following: a girl who has come of age, a girl who has declared her refusal, an imbecile, and a deaf-mute.

11. How so? If a man violates a girl who has come of age, or one who has declared her refusal, he must pay for her humiliation, blemish, and pain, even though neither of these two is entitled to the fine. And if he violates an imbecile or a deaf-mute he must pay only for the pain.

If, however, he seduces any of these, he is exempt from any payment whatsoever.

12. A man may not in any place pay the fine on the basis of his own mouth's admission of guilt, but only on the testimony of witnesses.

Therefore he who declares, "I have violated" or "seduced the daughter of So-and-so," need not pay the fine, and must pay only for the humiliation and the blemish, on the ground of his own mouth's admission.

So, too, if a girl summons a man to court and says to him, "You violated" or "seduced me," while he replies, "This has never happened," he must submit to an informal oath, because had he admitted the charge, he would have had to pay her for the humiliation, the blemish, and the pain on his own mouth's admission.

13. If she says, "You violated me," to which he replies, "Not so, for I only seduced you," he must swear an oath authorized by the Torah concerning payment for the pain, and must pay for the humiliation and the blemish, because he has admitted part of the claim, as will be explained in its proper place.

14. The three kinds of penalties for seduction and the four kinds for violation are payable to the father, because all increment during maidenhood accrues to him. If the girl has no father, all these kinds of penalties are payable to her.

15. If the seduced or violated girl does not claim her due until she comes of age or is married, or until her father is dead, the four or three kinds of penalties, respectively, accrue to her.

If she appears in court and claims them, and then comes of age, or is married, they accrue to her father. If the father dies after her appearance in court, the penalties accrue to her brothers, because they are her father's heirs, seeing that the father was entitled to them at the time when she appeared in court.

16. If a girl is espoused and then divorced, only the fine that is due to her is payable to her.

If she is violated or seduced, and is then betrothed to another man, the fine and the other penalties are payable to her father,

because espousal does not remove the daughter from her father's authority.

17. I say that the purpose of the statement in the Torah, *Profane not thy daughter to make her a harlot* (Lev. 19:29), is that a father should not say, "Since the Torah has obligated the violator or seducer to no more than the payment of money to the father, behold, I will hire out my virgin daughter to this man to have intercourse with her at any price that I may choose, or indeed I will let him do so gratis, since a man has a right to waive his claim to money due him from anyone he may choose." That is why it is said, *Profane not thy daughter*. For when the Torah prescribes payment of money and not lashes for the violator or seducer, it is on the understanding that the act took place by mischance and without the knowledge of her father, nor with any previous preparation on her part, for such a thing does not occur regularly and is unusual.

If, however, the father holds his virgin daughter ready for all comers, he causes the earth to become filled with lewdness, so that a father might eventually marry his daughter, and a brother his sister, for if the girl should conceive and bear a child, it would not be known whose child it is. He who prepares his daughter for such misconduct makes her a prostitute, and both she and the man who goes in unto her are liable to lashes on the authority of *There shall be no prostitute of the daughters of Israel* (Deut. 23:18). Such a man is not liable to the fine, because the Torah has imposed this fine only upon the violator and seducer, while this woman, who has prepared herself for such misconduct, whether of her own volition or at her father's behest, is a prostitute.

The prohibition of prostitution applies to both virgin and nonvirgin, which is why the Sages have said that a woman known since childhood to be of ill repute is not entitled to the fine, as we have explained, inasmuch as she is presumed to have voluntarily abandoned herself to such misconduct.

CHAPTER III

1. If a man issues an evil report concerning a daughter of Israel, and it is found to be false, he is liable to lashes, as it is said, *And the elders . . . shall . . . chastise him* (Deut. 22:18), seeing that he had already been warned by *Thou shalt not go up and down as a talebearer among thy people* (Lev. 19:16). And to her father he must pay the weight of one hundred sela' of refined silver. If she is an orphan, they accrue to her.

2. If a man issues an evil report concerning a minor female or one who has come of age, he is exempt from both the fine and the lashes. Only when he defames a maiden is he liable, for it is said, *and* [*they shall*] *bring forth the tokens of the damsel's virginity* (Deut. 22:15), the term *damsel* being here spelled in full.

3. This rule is in force only when the Temple is in existence, and may be applied only by the court of twenty-three judges, because such defamation may involve capital punishment; for should the matter be found to be as charged, the girl would be liable to be put to death.

Cases of violation and seduction, on the other hand, may be tried at all times, and by a court of three judges, as will be explained in the Laws Concerning the Sanhedrin.

4. It is a positive commandment of the Torah that the defamer's wife shall abide with him forever, for it is said, *and she shall be his wife* (Deut. 22:19)—even if she is blind or afflicted with boils. And if he divorces her, he has also transgressed a negative commandment, for it is said, *he may not put her away all his days* (*ibid.*), and must be compelled to take her back; but he is not liable to lashes, as we have explained in the case of the violator.

If another man acts first and betrothes her, or if she dies, or if

he is a priest who is forbidden to marry a divorcée, he is liable to lashes for having divorced her.

5. If a matter of unchastity is found in her, or if she is found to be prohibited to him by a negative or positive commandment, or even if she is his forbidden relative of the second degree, he may dismiss her with a get, for it is said, *and she shall be his wife* (Deut. 22:19)—meaning, if she is fit to be his wife.

And why does not the positive commandment overcome the negative commandment, both in the case of the defamer and in the case of the violator, and obligate him to marry the girl even though she is forbidden to him? Because it is possible that she would refuse to abide with him, in which case both the negative and the positive commandments would be fulfilled.

6. What constitutes defamation? The act of the husband who appears in court and declares, "I have had intercourse with this maiden, and found no tokens of virginity in her. And when I investigated the matter, it came to my knowledge that she had played the harlot while under me, after I had espoused her, and these are my witnesses before whom she had played the harlot." The court should listen to the testimony of the witnesses and scrutinize it. If the charge is found to be true, the girl is liable to death by stoning. If the girl's father brings witnesses in refutation of the husband's witnesses, so that it is found that the latter have testified falsely, they are liable to stoning, while the husband is liable to lashes and the payment of one hundred sela'. This is what is meant by *and yet these are the tokens of my daughter's virginity* (Deut. 22:17)—these are the witnesses who will refute the husband's witnesses.

If the husband in his turn brings other witnesses in refutation of the father's witnesses, both the girl and her father's witnesses are liable to death by stoning. This is implied in the verse, *But if this thing be true* (Deut. 22:20), from which we learn by tradition that this passage refers to three sets of witnesses, the first set, the second set refuting the first, and the third refuting the second.

7. If the husband defames his wife after she had come of age, he is exempt from both lashes and fine, even if he brings witnesses that she had played the harlot while under him when she was still a maiden.

If the charge is found to be true, she is liable to death by stoning, even though she has already come of age, inasmuch as she was still a maiden when she had played the harlot.

8. In the case of any maiden who is not entitled to the fine if she is violated or seduced, her defamer also is exempt from both lashes and monetary payment.

Similarly, in the case of a heathen woman who became a proselyte, or a bondswoman who was emancipated, when she was less than three years old—even if she was conceived in unholiness but was born in holiness—her defamer is exempt from both fine and lashes, for it is said, *because he hath brought up an evil name upon a virgin of Israel* (Deut. 22:19), implying that the girl must be both conceived and born in holiness.

9. If a man betrothes a maiden, divorces her, betrothes her again, and then defames her by bringing witnesses to the effect that she has played the harlot while under him after the first betrothal, and if these witnesses are found to have testified falsely, he is exempt.

Similarly, if the girl is his widowed sister-in-law whom he has taken in levirate marriage, and if he defames her by producing witnesses to the effect that she had played the harlot while under betrothal to his brother, and if these witnesses are then found to have testified falsely, he is exempt from both lashes and monetary payment.

In each case the husband who is exempt may divorce his wife if he so desires.

10. The husband is not liable unless he has normal intercourse with his wife, and then charges her with having previously had illicit normal intercourse.

If he has abnormal intercourse with her, and then says, "I did

not find her a virgin," he is exempt, but is liable to a flogging for disobedience.

11. Similarly, if he says, "I did not find her a virgin," without adding, "She has played the harlot while under me," or if he says, "She has played the harlot while under me," but does not produce the witnesses, who come forth on their own initiative, he is exempt, even though the witnesses are liable to the death penalty if found to have testified falsely.

12. The statement in the Torah, *And they shall spread the garment* (Deut. 22:17), is a euphemism, for what is discussed here is an intimate matter. The same is true of the father's statement, *these are the tokens of my daughter's virginity* (*ibid.*), which signifies the witnesses who testify in refutation of the husband's witnesses. As for the statement, *But if this thing be true* (Deut. 22:20), it means that she is liable to the death penalty only if she had played the harlot after the espousal and before witnesses, for it is said, *to play the harlot in her father's house* (Deut. 22:21). Before espousal, however, the Torah has already declared her completely exempt, while the man who had intercourse with her, whether by seduction or by violence, is liable to money payment only.

TREATISE V

LAWS CONCERNING THE WAYWARD WOMAN

Involving Three Commandments,
One Positive and Two Negative
To Wit

1. To do unto the wayward woman according to the law of jealousy set forth in the Torah.
2. To put no oil on her offering.
3. To put no frankincense on it.

An exposition of these commandments is contained in the following chapters.

NOTE

In the list of 613 commandments prefixed to the Code, those dealt with in the present treatise appear in the following order:

Positive commandment:

[1] 223. To do unto the wayward woman according to the law of the Torah, as it is said: *and the priest shall execute upon her all this law* (Num. 5:30).

Negative commandments:

[2] 104. To put no olive oil on the wayward woman's offering, as it is said: *he shall pour no oil upon it* (Num. 5:15).

[3] 105. To put no frankincense on the wayward woman's offering, as it is said: *nor put frankincense thereon* (*ibid.*).

CHAPTER I

1. Jealousy as mentioned in the Torah in the verse, *and he be jealous of his wife* (Num. 5:14), is manifested by the husband's telling his wife in the presence of witnesses, "Do not seclude yourself with this man, So-and-so," even if the man referred to is her father, her brother, a heathen, a slave, or an impotent male, i.e., one who is unable to have an erection and to beget children.

2. Seclusion as mentioned in the Torah in the verse, *she being secluded* (Num. 5:13), means seclusion with the same man against whom her husband had warned her in the presence of two witnesses by saying, "Do not seclude yourself with him," whereby she tarries with him long enough to suffer defilement, i.e., as long as it takes to roast an egg and swallow it. In that event she is forbidden to her husband until she drinks of the water of bitterness and the matter is scrutinized.

In the time when there is no water of the wayward woman, she becomes forbidden to her husband forever, and must be dismissed without her kĕṯubbah.

3. If the husband warns his wife simultaneously against two men, and says to her, "Do not seclude yourself with either So-and-so or So-and-so," and if she secludes herself with both of them together and tarries with them long enough to suffer defilement—even if both men are her brothers, or if one is her father and the other her brother—she is forbidden to her husband until she drinks of the water.

4. If the husband says to his wife in the presence of two witnesses, "Do not speak to So-and-so," this does not constitute a warning. Therefore, even if she goes into seclusion with that man in the presence of witnesses, and tarries with him long enough to suffer defilement, she does not thereby become for-

bidden to her husband, nor is she obligated to drink of the water on account of that warning.

5. Similarly, if he says to her, "Do not seclude yourself with this man," and she is subsequently seen conversing with that man, this does not constitute seclusion. Hence she does not become forbidden, nor need she drink of the water.

So, too, if in the absence of prior warning two witnesses come forth and testify that she had secluded herself with this man and tarried with him long enough to suffer defilement, she does not become forbidden to her husband, nor need she drink of the water.

6. If the husband says to his wife, "Do not seclude yourself with this man, So-and-so," and that person is a minor less than nine years and one day old, or if he says to her, "Do not seclude yourself with this animal," this does not constitute a warning, for it is said, *and a man lie with her carnally* (Num. 5:13), which excludes a minor or an animal, since neither of them makes her forbidden to her husband.

7. If the husband retracts his warning before his wife's seclusion, it stands retracted, and it is the same as if he had never warned her. If, however, the retraction takes place after her seclusion, it has no effect.

If he then divorces her, he is considered to have retracted his warning. Hence if he subsequently takes her back, he must issue another warning to her.

8. If the husband warns his wife in the presence of two witnesses, and then sees her seclude herself with the same man who is the object of his jealousy, and tarry with him long enough to suffer defilement, she becomes thereby forbidden to her husband, and he must dismiss her and pay her her kĕṯubbah, for he may not cause her to drink of the water solely on the basis of his own testimony.

Similarly, if after the warning and the seclusion, he hears the people murmuring after her, so much so that he overhears the

women who spin by the light of the moon gossiping concerning her, to the effect that she had played the harlot with the man who is the object of her husband's jealousy, he is forbidden to retain her, and must dismiss her and pay her her kĕṯubbah.

9. If only one witness comes forth to testify that she had secluded herself with the other man after her husband had warned her, and tarried with him long enough to suffer defilement, the rule is as follows: If the husband regards the witness as trustworthy and has confidence in him, he must dismiss his wife and pay her her kĕṯubbah; if not, his wife remains permitted to him.

10. The following are to be warned by the court: a woman whose husband has become a deaf-mute or an imbecile, or is away in another country, or is confined in prison—not to the extent of making her drink of the water, but only to the extent of declaring her subject to forfeiture of her kĕṯubbah.

11. How so? If the court hears the people murmuring after her, it should summon her and say to her, "Do not seclude yourself with this man, So-and-so."

If thereafter witnesses come forth to testify that she did seclude herself with that man, and tarried with him long enough to be defiled, the court should declare her forever forbidden to her husband and tear up her kĕṯubbah. And whenever her husband returns, or recovers, or is released from prison, he must give her a geṭ. He may not, however, compel her to drink of the water, inasmuch as he himself did not issue the warning to her.

12. If the woman drinks of the water of bitterness and is cleared, and if her husband warns her again in connection with the very same man, on account of whom she had to drink of the water, and if she again secludes herself with him, the husband may not make her drink of the water a second time on account of that same man; but she becomes forbidden to her husband forever and must be dismissed without her kĕṯubbah.

If, however, the second warning concerns another man, and

she secludes herself with that other man in the presence of witnesses, she must drink of the water a second time. This may be repeated any number of times, as long as each ordeal involves a different man.

13. If the husband makes his wife drink of the water and then divorces her, and she thereafter marries another man; and if the second husband warns her in connection with the same man on account of whom her first husband had made her drink of the water, and she nevertheless secludes herself with that man in the presence of witnesses, the second husband may make her drink of the water on account of that man, inasmuch as he is the second husband. Even if she marries a hundred husbands, one after the other, she may be made to drink repeatedly of the water on account of that one man. And it cannot be said that of a certainty there is now a presumption that she had become involved with that man and was defiled, unless there is a witness thereto.

14. If a woman, after having been warned by her husband, secludes herself in the presence of witnesses with the other man, and if, as she is about to drink of the water, another witness comes forth and testifies that she had indulged in intercourse in his presence with the same man, she is forbidden to her husband forever, and need not drink of the water, but must be dismissed without her kĕṯubbah. This applies even if the witness to the defilement is also one of the witnesses to the seclusion, for it is said, *and there be no witness against her* (Num. 5:13), whereas here there is a witness.

15. Even a woman, a slave, a bondswoman, a witness disqualified for a transgression against Scribal law, or indeed even a relative, is eligible to testify against a wayward woman, to the effect that she had played the harlot. She then becomes forbidden to her husband forever, but need not drink of the water, and must be dismissed without her kĕṯubbah. For inasmuch as this was preceded by her husband's warning and by her seclusion

in the presence of qualified witnesses, and inasmuch as the Torah has decreed that a single witness may be regarded as trustworthy in the matter of defilement, all the aforementioned persons are also qualified to testify concerning defilement. Even the five women who are presumed to dislike each other are qualified to testify against each other to the effect that they have been defiled, and are to be believed to the extent of rendering the accused woman forbidden to her husband and relieving her from drinking of the water, but not to the extent of making her forfeit her kĕṯubbah; rather, she is entitled to collect it and depart.

16. If a single qualified witness comes forth and says, "She was defiled," she need not drink of the water, as we have explained. If thereafter another witness comes forth to contradict him, by saying, "She was not defiled," no attention need be paid to him. For a single witness to the defilement of a wayward woman is equivalent to two witnesses, and therefore the testimony of the second witness cannot invalidate the testimony of the first witness, who counts as two witnesses.

17. If both witnesses come forth simultaneously, one saying, "She was defiled," and the other saying, "She was not," or if one witness says, "She was defiled," and then two other witnesses come forth and say, "She was not," she must drink of the water.

18. If a qualified witness comes forth at the same time as several women or several disqualified witnesses, the qualified witness saying, "She was defiled," and the women or the disqualified witnesses saying, "She was not," she must drink of the water, because a single qualified witness and several disqualified witnesses are regarded as balancing each other.

19. If all the witnesses are disqualified, the decision follows the majority. How so? If two women say, "She was defiled," and three say, "She was not," she must drink of the water. If three women say, "She was not defiled," and four say, "She was

so," she need not drink of the water. If the number of witnesses is equal, she must drink of the water.

20. In all cases where we have said that a wayward woman need not drink of the water because there are witnesses to her defilement, she becomes forbidden to her husband forever, and must be dismissed without her kĕṯubbah. For on the one hand, she has already become forbidden to him on the strength of his warning and of her seclusion, and on the other hand, the drinking of the water, which might have rendered her permitted, is now excluded by the presence of the witness against her, as we have explained.

CHAPTER II

1. A woman whose husband had warned her and who then secluded herself with the other man, should not be compelled to drink of the water of bitterness. Rather, she may, if she so desires, say, "Yes, I was defiled," and should then be dismissed without her kĕṯubbah; she is forbidden to her husband forever, and need not drink of the water.

So, too, if she says, "I was not defiled, but I will not drink," she should not be compelled to drink, but should be dismissed without her kĕṯubbah.

Similarly, if her husband says, "I do not wish to make her drink," or if he has intercourse with her after her seclusion, she need not drink of the water, but may claim her kĕṯubbah, and should then be dismissed, remaining forbidden to him forever.

2. The following women are not eligible to drink of the water, even if they are willing to do so and their husbands desire it; rather, once the witnesses to the seclusion have come forth after the witnesses to the warning, these women must be dismissed without their kĕṯubbah, and are forbidden to their husbands forever. They are fifteen in number, to wit: an

espoused woman, a widow awaiting levirate marriage, a female minor married to an adult man, an adult woman married to a male minor, the wife of a hermaphrodite, the wife of a blind man, the wife of a man who is lame, mute or deaf, or has lost a hand by amputation; and also a woman who is lame, mute, or blind, or has lost a hand by amputation, or is deaf. None of these is eligible to drink of the water.

3. Whence do we know that these are not eligible to drink? From the following verses: *when a wife, being under her husband, goeth aside* (Num. 5:29)—*under her husband* excludes an espoused woman and a widow awaiting levirate marriage, since neither is under her husband; *a wife* excludes a minor female; *under her husband* excludes the wife of a male minor or of a hermaphrodite, who is not a man. *And it be hid from the eyes of her husband* (Num. 5:13) excludes the wife of a blind man; *and the priest shall cause the woman to stand* (Num. 5:18) excludes a lame woman: *and put . . . in her hands* (*ibid.*) excludes a woman who has no hand, or has one so crooked or shriveled that it cannot take hold of anything, even if only one of her hands is so disabled, since it is said, *her hands; and the woman shall say* (Num. 5:22) excludes a woman who is mute; *and shall say unto the woman* (Num. 5:19) excludes a woman who cannot hear.

In general, the verse, *When a wife, being under her husband, goeth aside* (Num. 5:29), implies that she must be as perfectly sound as he is, and vice versa.

Hence you learn that whatsoever hinders the wife from drinking of the water also hinders her husband from causing her to drink, and conversely, that whatsoever blemish in the husband hinders him from causing his wife to drink, that same blemish in the wife hinders her from drinking.

4. If a female minor, whose father had given her in marriage, has of her own will played the harlot, she becomes forbidden to her husband. She may, therefore, be subjected to a warning, not

to the extent of making her drink of the water, but only to the extent of rendering her liable to forfeiture of her kĕṯubbah, as we have explained.

A female minor who is eligible to exercise the right of refusal, however, is not subject to a warning, because she can have no deliberate intention to become forbidden to her husband. Therefore, even if her husband is a priest, she does not become forbidden to him.

5. If a man warns his espoused wife or his sister-in-law bound to him by levirate tie, and she secludes herself with the other man after his marriage to her, she must drink of the water, just like all other women.

If the marriage has already taken place, and she secludes herself with the other man after her husband's warning, but before her husband had intercourse with her, she need not drink of the water, but must be dismissed without her kĕṯubbah, and is forbidden to him forever. For it is said, *and some man have lain with thee besides thy husband* (Num. 5:20), which implies that her husband's intercourse had preceded the other man's intercourse.

6. A female proselyte, an emancipated bondswoman, the wife of a proselyte, the wife of an emancipated slave, a female bastard, the wife of a bastard, the wife of a congenital eunuch or of a man-made eunuch—all these, being permitted to their husbands, are like other women and are liable to drink of the water.

7. The husband of a pregnant or nursing woman may warn her and cause her to drink of the water, while she is in her present condition.

If a woman is about to drink of the water, and her husband dies before she drinks of it, she need not drink, but neither is she entitled to her kĕṯubbah.

8. If a man, after coming of age, indulges in any illicit intercourse, the water that causes the curse cannot test his wife. Even

if he has intercourse with his spouse while she is still in the house of his father-in-law, which is forbidden only by Scribal Law, the water cannot test his wife, for it is said, *And the man shall be clear from iniquity, and that woman shall bear her iniquity* (Num. 5:31), which implies that the woman shall bear her iniquity only when the man is clear from iniquity.

9. Therefore, if the wife is forbidden to her husband by a negative or positive commandment, or even if she is his forbidden relative of the second degree, and if after he warned her, she secludes herself with the other man, she need not drink of the water, but must be dismissed without her kĕṯubbah, and becomes forbidden to her husband on this account as well.

If a man transgresses and marries another man's pregnant or nursing wife, she is eligible to drink of the water, for there is really no transgression involved here.

10. If a man who has neither a wife capable of childbearing nor children marries a sterile, aged, or barren woman, she need not drink of the water, but neither is she entitled to her kĕṯubbah.

If, however, he does have children, or has another wife capable of childbearing, he may cause the wayward wife to drink of the water, even though she is aged, or sterile, or barren, and thus unable to bear children. For when the Torah says *and shall conceive seed* (Num. 5:28), it refers only to a woman capable of childbearing, to the effect that if previously she bore children in pain, she shall now bear them with ease, and if previously she gave birth to girls, she shall now give birth to boys.

11. If the man had another wife and children, but they died in the interval between the time of his warning and the time of the unfruitful wife's seclusion with the other man, he may make her drink of the water, seeing that she has already become eligible to drink of it.

On the other hand, if he has neither children nor another wife capable of childbearing, but only this barren wife, or the

like of her, and if in the interval between his warning and her seclusion with the other man, a son is born to him by his divorced wife, his barren wife has already become ineligible to drink of the water.

12. Any woman who was warned and went into seclusion with another man, but did not drink of the bitter water, whether it was because her husband did not wish to make her drink, or because she herself was unwilling to do so, whether it was because a witness came forth to testify to her defilement, or because she herself admitted it, whether it was because she was one of the women who are ineligible to drink of the water, or because it was the court that had warned her—inasmuch as she is in any case forbidden to her husband, she is likewise forever forbidden to the man with whom she had secluded herself, in the same manner as she is forbidden to her husband. If the other man transgresses and does marry her, he must be compelled to dismiss her with a get, even if he has several children by her. For the Sages have learned by tradition that just as she is forbidden to her husband, so is she forbidden to the other man.

13. If there was no prior warning, and witnesses came forth against her to the effect that she had secluded herself with the other man, and that upon entering the premises they found something unseemly—for instance, if having entered after that man, they found her tying her girdle, or found saliva high on the canopy of the bed, or the like—the rule is that if her husband dismisses her on the ground of this unseemly thing, she may not marry the offender, and is forbidden to him.

If, however, the offender transgresses and does marry her, the rule is as follows: If she has children by him, she need not be dismissed; if she has no children by him, she must be dismissed.

14. When does this apply? When the inhabitants of the city murmur against her and the offender for a day and a half or more, saying, "So-and-so has indulged in harlotry with So-

and so," and this gossip does not cease thereafter; provided that she or he has no enemies who might spread such gossip.

If, however, there is no such murmuring on this subject in the city, or if the gossip ceases, but not out of fear, the rule is that if she married the offender, she need not be dismissed, even if she has no children by him. Even if a single witness comes forth to testify that she had played the harlot with that man, she need not be dismissed.

15. If a woman, having been divorced by her husband because witnesses had testified to an unseemly thing affecting her, marries another man, and is in turn divorced by him, she may not now marry the offender on whose account she was divorced by her first husband. But if she does marry him, she need not be dismissed, even if she has no children by him.

16. Any woman against whom two witnesses have come forth to testify that she had played the harlot with her present husband while she was still under her first husband, must be dismissed by the former, even if she has several children by him.

Wherever we have said that a woman must be dismissed, the meaning is without her kĕṯubbah.

CHAPTER III

1. What was the procedure for administering the water to the wayward wife?

The husband appeared before the court in his city and said to them, "I did warn this wife of mine concerning So-and-so, yet she secluded herself with him, and these are my witnesses thereunto. Howbeit she says she is innocent. I therefore desire to cause her to drink of the water, so that the matter may be put to the test."

The court, upon hearing the testimony of the witnesses, appointed two disciples of the wise to watch the plaintiff, lest he

should indulge in intercourse with his wife prior to her drinking of the water, seeing that she is forbidden to him until she does drink. Thereupon the court sent him on to Jerusalem, because the wayward wife may be made to drink of the water only at the Great Court of seventy elders in the Temple.

2. When they reached Jerusalem, the Great Court seated the woman in their midst, and with her husband absent, endeavored to inspire her with great awe, in order to avoid having her drink of the water. They said to her: "My daughter, much is wrought by wine, much by levity, much by childishness, and much by evil neighbors. Be thou not the cause whereby the Great Name, that is inscribed in holiness, would be blotted out by the water."

They said to her further: "My daughter, many have preceded thee, and have been swept away. Great and worthy men have been overcome by their Inclination to evil, and have stumbled." They then recited to her the story of Judah and Tamar his daughter-in-law, the story of Reuben and his father's concubine —according to its literal interpretation—and the story of Amnon and his sister. All this in order to ease the way for her, so that she might confess.

If she thereupon said, "Yea, I have been defiled," or "I will not drink," she was dismissed without her kĕṯubbah, and went her way.

3. If she stood upon her plea that she was innocent, they took her to the East gate of the Temple Court, which is opposite the Holy of Holies, made her go up and down from place to place, and led her around, in order to tire her out so much that she might become sick of it, and perchance confess.

4. If she still stood upon her plea, they led her out to a place facing the East gate on the outside, and made her stand there. If she was clothed in white, she was made to change to black, but if black looked becoming on her, she was made to dress in garments of a color that did not make her attractive, and was

also made to remove all the silver and gold ornaments that she wore.

5. They then gathered a great throng of women around her, for all women who were there were in duty bound to behold her, as it is said, *that all women may be taught not to do after your lewdness* (Ezek. 23:48). Also any man who wished to come and behold her, was allowed to do so. The while she stood among them stripped of wrap and kerchief, and clad only in her body clothes and head cap, like a woman in the privacy of her home.

6. Her male or female slaves were not permitted to attend, because being closely familiar to her, the sight of them might strengthen her resolution.

7. The priest then adjured her, in a language that she understood, and made it known to her in her own tongue that all this had been brought upon her solely by warning and seclusion, namely that her husband had warned her, and yet she secluded herself. He said to her, in a language that she understood: *If no man have lain with thee, and if thou hast not gone aside to uncleanness, being under thy husband, be thou free from this water of bitterness that causeth the curse; but if thou hast gone aside, being under thy husband, and if thou be defiled, and some man have lain with thee besides thy husband . . . the Lord make thee a curse and an oath among thy people, when the Lord doth make thy thigh to fall away, and thy belly to swell; and this water that causeth the curse shall go into thy bowels, and make thy belly to swell, and thy thigh to fall away* (Num. 5:19–22). To which the woman responded, "Amen, Amen," in the same language that she understood.

The priest made it known to her further that her belly shall be stricken first and her thigh last, in order to forestall discredit of the efficacy of the water.

8. Thereupon the priest brought a scroll made out of the hide of a clean animal, the same as used for a Scroll of the Torah,

and inscribed upon it—in the sacred tongue, with ink free of vitriol, and specifically in the name of that woman, exactly as in the case of a get—all the words wherewith he had just adjured her, letter for letter and word for word, spelling the Name as it is written, but without the concluding "Amen, Amen."

9. He then brought an earthenware vessel that had never been used before, and that had not been made so long ago that it looked worn out. If, however, the aged vessel was first returned to the kiln to make it look like new, it might be used, Thereupon he poured into it one half-log of water from the laver, measuring it out with the half-log measure which was in the Temple, and entered into the Temple Hall with it.

10. To the right, as one entered the Temple Hall, there was a space one cubit square, paved with a marble slab with a ring affixed to it. The priest lifted up the slab and scooped some earth out of the floor of the Tabernacle, poured it over the water so that it would remain visible upon the surface of it, and added to it some bitter ingredient, like wormwood, or the like, as it is said, *the water of bitterness* (Num. 5:18). In this mixture he blotted out the writing on the scroll inscribed in the name of that woman, doing it with such thoroughness that no recognizable trace of the writing remained upon the scroll.

11. Thereupon one of the priests of the Temple Court approached her, grasped her garments at the front, and ripped them apart until he laid bare her bosom. He then uncovered her hair and loosened her tresses, in order to make her even more unattractive. After which he fetched an Egyptian rope, to remind her of the Egyptian doing that she had committed—if no Egyptian rope could be found, he fetched any other kind of rope —and tied it above her breasts, in order to prevent her clothes from falling off, seeing that they were torn, and leaving her naked.

12. He then brought a tenth of an ephah of barley flour, provided by the husband, put it in an Egyptian basket—this

basket, and the rope mentioned above, were paid for out of the residue of the Chamber—and placed it in her hands in order to make her weary.

13. The priest then took the meal offering out of the basket and put it in a vessel of ministry, without adding to it oil or frankincense. If he did add them, he was doubly punished with lashes, once for the oil and once for the frankincense, for it is said, *he shall pour no oil upon it, nor put frankincense thereon* (Num. 5:15).

14. During all the time that the woman's head was uncovered and the tenth of an ephah held in her hands, the water of bitterness was in the vessel held by the priest, so that she would be made to see the water, for it is said, *and the priest shall have in his hand the water of bitterness that causeth the curse* (Num. 5:18).

15. He then made her drink of the water. After she drank of it, he took the vessel of ministry containing the meal offering and placed it in her hands. He thereupon put his hand under hers, and waved the offering on the East side of the altar, as was done in all waving, back and forth, and up and down.

He then brought the meal offering to the Southwestern corner of the altar, as was done with all meal offerings brought by individuals, took a handful of it, and burned it, while the rest was consumed by the priests.

16. If the woman was innocent, she came out and went her way, remaining permitted to her husband.

If she was defiled, her face immediately turned pale, her eyes bulged, and her veins filled up. And all those present cried, "Away with her, away with her!", lest her menstrual blood should start flowing, seeing that menstruating women would cause the women's section of the Temple Court to become unclean. Thereupon she was removed from that section, where she was standing. After this, first her belly became swollen, then her thighs fell away, and finally she died.

17. At the very hour that she died, her paramour, on whose account she was made to drink of the water, likewise died, wherever he happened to be, and whatsoever befell her—the swelling of the belly and the falling away of the thighs—befell him also.

All this applied only if her husband had never indulged in illicit intercourse. If he had, the water could not test his wife, as we have explained.

18. If the husband who had thus transgressed caused his wife to drink of the water, he thereby added another sin to his iniquity, in that he caused the Ineffable Name to be blotted out in the water in vain, and discredited the efficacy of the water. For his wife was bound to tell other women that she had played the harlot, and yet the water had no effect upon her, seeing that she was unaware that her husband's own doings were responsible for the water's failure to test her.

19. Therefore, when overt adulterers multiplied during the period of the Second Temple, the Sanhedrin abolished the water of bitterness, having found support for this enactment in the prophet's saying, *I will not punish your daughters when they commit harlotry,* etc. (Hos. 4:14).

20. If a wayward woman has earned the merit of studying the Torah, even though she is not commanded to study it, her merit causes her punishment to be held in suspense, and she does not die immediately, but rather declines gradually, and grave illnesses come upon her until she dies a year, or two, or three later, depending upon her merit, by way of the swelling of her belly and the falling away of her limbs.

21. A wayward woman who had drunk of the water of bitterness and did not die immediately, is permitted to her husband, even if he is a priest. Even if various illnesses commence to afflict her and the rest of her limbs become affected, she is still permitted to her husband, so long as her belly does not swell and her thighs do not begin to fall away.

Once, however, her belly begins to swell, and her thighs to fall away, she is of a certainty forbidden to her husband.

22. A wayward woman who had drunk of the water and was proven innocent gained in health and her face shone. Any illness that afflicted her passed away, and she conceived and gave birth to a male child. If it was her wont to bear children with difficulty, she now bore them with ease; if it was her wont to bear female children, she now bore males.

23. If after she had drunk of the water witnesses came forth to testify to her defilement, she was dismissed without her kĕṯubbah, and was forbidden to her husband, even if none of the aforementioned tokens of guilt had manifested themselves in her. For the water could test only a woman against whom there were no witnesses to testify that she had played the harlot. Furthermore, perchance the water did not test her because her husband was not free from iniquity.

If, however, only one witness came forth to testify that she was defiled, she did not become forbidden to her husband, and might continue to abide with him, inasmuch as she had already drunk of the water.

24. If a woman played the harlot under duress or unwittingly, or if the man on account of whom her husband had warned her had had no more than bodily contact with her, the water could not test her, for it is said, *neither she be taken in the act* (Num. 5:13), which excludes the victim of duress who has been taken by force; *and have acted unfaithfully against her husband* (Num. 5:27), which excludes the one who has acted unwittingly; *and a man lie with her carnally* (Num. 5:13), which excludes the man who had no more than bodily contact with her.

CHAPTER IV

1. On the fifteenth day of Adar the court turned their attention to public needs, and examined women, those liable to drink

of the water, in order to cause them to drink of it, as well as those liable to be subjected to a warning, in order to render them subject to dismissal without their kĕṯubbah.

Wayward women might be made to drink of the water at any time.

2. The drinking of the water by the wayward woman might take place only in the daytime, and the entire day was suitable for it. But two wayward women might not be made to drink at the same time, for it is said, *And the priest shall bring her near, and set her before the Lord* (Num. 5:16).

3. A wayward woman who out of fear and dread had said, "I will not drink," might change her mind and say, "I am willing to drink." If, however, she had said, "I will not drink," while seemingly in sound health and unaffected by fear or dread, she might not turn around and say, "I am willing to drink."

4. If she had said, "I will not drink," before the writing on the scroll was blotted out, the scroll was hidden away and was unfit for use for another wayward woman, and her meal offering was scattered over the ash heap.

If she said, "I will not drink," after the writing on the scroll had been blotted out, they chided her and forced her to drink against her will.

5. They then endeavored to overawe her, in order to make her drink, by saying to her, "My daughter, if the matter be clear unto thee that thou art innocent, stand upon thy certainty—drink, and fear not, for this water is but like unto a dry drug that is placed upon living flesh: if there be a wound thereon, the drug entereth and goeth down, but if there be no wound, the drug doth nothing."

6. If she then said, "I have been defiled," the water was poured out, even though the writing on the scroll has already been blotted out, because there was no more holiness in it, and her meal offering was scattered over the ash heap.

7. If the wayward woman's scroll was written at night, it was disqualified, for it is said, *And the priest shall write these curses . . . And he shall make the woman drink . . . and bring it unto the altar* (Num. 5:23–25)—just as her offering must take place in daytime, so the writing of the scroll and the drinking must take place in daytime. If the priest wrote it in reverse order, it was likewise disqualified, as it is said, *these,* meaning in the same order as set forth in the preceding verses. If he wrote it before she swore the oath, it was again disqualified, as it is said, *the priest shall cause the woman to swear . . . And . . . shall write* (Num. 5:21–23).

8. If he wrote the scroll in the manner of a letter, it was disqualified, as it is said, *in a scroll* (Num. 5:23).

If he wrote it on two strips, it was disqualified, as it is said, *in a scroll*—a single strip, not two or more. It might not be written on papyrus, or on unfinished skin, but only in a book scroll, as it is said, *in a scroll.* If he did write it on papyrus or on unfinished skin, it was disqualified.

9. If the scroll was written by an Israelite or a priestly minor, it was disqualified, as it is said, *And the priest shall write* (Num. 5:23). It might not be written with ink containing gum, vitriol, or anything else that leaves a visible and permanent trace, but only with ink free of vitriol, as it is said, *And . . . shall write . . . and he shall blot them out* (*ibid.*), implying that it must be writing that can be blotted out. If he wrote it with permanent ink, the scroll was disqualified.

10. If any recognizable trace of the writing remained on the scroll, it was disqualified, until it was thoroughly blotted out.

If the priest wrote one letter and blotted it out, then another letter and blotted it out, and so forth, until he completed the scroll, it was disqualified, unless it was written out in its entirety.

11. If the priest wrote the scroll not in the name of that particular woman, or blotted it out not in her name, it was disqualified.

If he wrote two scrolls for two wayward women and blotted

them out in the same vessel—or blotted them out in two vessels, and then mixed their contents by pouring them into one vessel—and made both women drink from it, the act was invalid, because each woman did not drink the water of her own scroll.

If he blotted out both scrolls in two vessels, mixed their contents, and then divided them again by pouring them into two vessels, he might not make the women drink. But if he did, the act was valid.

If the water was spilled, he wrote another scroll and fetched another vessel of water. If the water was spilled, but some was left, the remainder might not be given to the woman to drink. But if it was, the act was valid.

12. If the water of the wayward woman was left to stand overnight, it became disqualified. If the priest put in the earth first and then the water, the act was invalid. If there was no more earth in the Temple Hall, he fetched some from the outside, deposited it in the Temple Hall, took some of it, and poured it upon the surface of the water. He might not fetch ashes, but might bring humus, which is like earth.

13. He might not dig with a mattock in the Temple Hall in order to obtain earth, for it is said, *that is on the floor of the Tabernacle* (Num. 5:17). But if he did obtain the earth by digging, it was valid.

14. If the priest offered up her meal offering first, and then caused her to drink, the offering was valid.

If her meal offering became defiled before he placed it in the vessel of ministry, it was redeemed, like all meal offerings that became defiled before they were consecrated by the vessel of ministry, and another meal offering was brought in its place.

If the meal offering became defiled after it was consecrated by the vessel of ministry, it was burned.

Thus also, if before the prescribed handful was taken out of the meal offering, she said, "I have been defiled," or "I will not drink," or if her husband refused to make her drink, or if witnesses came forth to testify to her defilement, or if her hus-

band died, or if she herself died—in all these cases, the entire meal offering was burned.

If any of these events occurred after the handful was offered up, the remainder might not be consumed.

15. If her husband was a priest, the remainder of her meal offering was not eaten, inasmuch as he had a share in it. Nor was it offered up in its entirety as a burnt offering, like the offerings of the male members of the priesthood, inasmuch as she had a share in it. Rather, the handful was offered up separately, while the remainder was scattered over the ash heap.

If the witnesses against her were found to be false, her meal offering became profane.

16. If a man warns his wife on account of several men, and she secludes herself with each one of them, the husband need bring only one meal offering for all of them when he causes her to drink of the water, for it is said, *it is a meal offering of jealousies* (Num. 5:15)—one meal offering for several jealousies.

17. The husband may subsume in her oath not only that she did not play the harlot with the man on account of whom he had warned her, but also with any other man, and likewise that she had not played the harlot under him while she was espoused to him before marriage, as well as after she was married to him. He may not, however, subsume in her oath that she had not played the harlot before she was espoused to him, nor after she was divorced by him, if he had divorced her and then remarried her. For had she played the harlot during that time, she would not have thereby become forbidden to him, and any woman who, had she indulged in intercourse, would not have become forbidden to him, is not subject to any stipulation on his part.

Hence, if he consummates marriage with his widowed sister-in-law, he may not subsume in her oath that she had not played the harlot while awaiting levirate marriage, but he may subsume that she had not played the harlot while under his brother, for had she done so, she would have become forbidden to her levir.

So too, if he had divorced her and then remarried her, he may subsume in her oath that she had not played the harlot during their first marriage. He may also subsume in her oath her future conduct, namely, that she will not play the harlot while she is under him, nor after his remarriage to her, in case he should divorce her and then take her back.

Therefore, should she play the harlot in the future, the water will be effective in testing her, and she will be stricken with the aforementioned consequences. That is why it is said, *Amen, Amen* (Num. 5:22)—one Amen for this man, and the other Amen for any other man; one Amen for the period of marriage, and the other Amen for the period of espousal; one Amen for the past, and the other Amen for the future.

18. The Sages have made it a religious duty upon the sons of Israel to warn their wives, for it is said, *and he be jealous of his wife* (Num. 5:14), and whosoever thus warns his wife is moved by the spirit of purity.

He should not, however, warn his wife in a mood of playfulness, or in the course of conversation, or out of levity, or in consequence of a quarrel, or with the purpose of intimidating her. But if he transgresses and in the presence of witnesses does warn his wife while in one of the aforementioned moods, it is a valid warning.

19. It is improper for a man to act in haste and warn his wife at the outset in the presence of witnesses. He should rather do so privately, gently, and in the spirit of purity and admonition, in order to guide her to the straight path and remove the stumbling block.

Whosoever is not particular about his wife, his children, and the members of his household, failing to warn them and watch constantly over their ways, so as to assure himself that they are free from all sin and iniquity, is himself a sinner, for it is said, *And thou shalt know that thy tent is in peace; and thou shalt visit thy habitation, and shalt not sin* (Job 5:24).

LIST OF ABBREVIATIONS

Tractates of Mishnah, Tosefta, and Talmud

Ab—*'Abot*
Ar—*'Arakin*
AZ—*'Abodah Zarah*
BB—*Baba Batra*
Bek—*Bekorot*
Ber—*Berakot*
Bes—*Besah*
Bik—*Bikkurim*
BK—*Baba Kamma*
BM—*Baba Mesi'a*
Er—*'Erubin*
Git—*Gittin*
Hag—*Hagigah*
Hul—*Hullin*
Kel—*Kelim*
Ket—*Ketubot*
Kid—*Kiddušin*
Mak—*Makkot*
Meg—*Megillah*
Men—*Menahot*
MK—*Mo'ed Katan*
MSh—*Ma'aśer Šeni*
Naz—*Nazir*
Ned—*Nedarim*
Nid—*Niddah*
Pes—*Pesahim*
RH—*Roš haš-Šanah*
Sanh—*Sanhedrin*
Shab—*Šabbat*
Sheb—*Šebi'it*
Sheb—*Šebu'ot*
Shek—*Šekalim*
Sot—*Sotah*
Suk—*Sukkah*
Ter—*Terumah*
Yeb—*Yebamot*
Zeb—*Zebahim*

B. prefixed to the name of a tractate indicates a reference to the Babylonian Talmud; P. indicates a reference to the Palestinian (Jerusalemite) Talmud; and Tos a reference to the Tosefta (ed. Zuckermandl, Pasewalk, 1880; 2d ed., Jerusalem, 1937). Otherwise the reference is to tractates of the Mishnah.

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Alfasi—Responsa, ed. R. Wolf Leiter, Pittsburgh, 1954
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ARN—'Abot dě-Rabbi Nathan

Asher, R.—R. Asher ben Jehiel (1250–1328), author of a legal compend of the Talmud, after the example of Alfasi, but including the opinions of later authorities

DER—Derek 'Ereṣ Rabbah

DEZ—Derek 'Ereṣ Zuṭa

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JE—Jerusalem Edition of the Code, published by the Kook Foundation; Book of Women, with commentary by S. T. Rubinstein, Jerusalem, 5718/1958

KM—*Kesef Mišneh* (commentary on the Code, by Joseph Caro [1488–1575])

LM—*Leḥem Mišneh* (commentary on the Code, by Abraham Ḥiyya di Boton [d. 1588])

MM—*Maggiḏ Mišneh* (commentary on the Code, by Vidal de Tolosa [14th century])

Meiri—Menahem ben Solomon ham-Meiri (14th century), author of *Beṭ hab-bĕḥirah* (commentary on the Talmud)

MO—*Migdal 'oz* (commentary on the Code, by Shem-Tob ben Abraham [14th century])

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OhG—*'Oṣar hag-gĕ'onim,* ed. B. M. Lewin, Haifa and Jerusalem, 1928–43

PhM—*Peruš ham-Mišnah* (Maimonides' commentary on the Mishnah)

Preuss, J.—*Biblisch-Talmudische Medizin,* Berlin, 1923

RABD—*Haśśaḡoṭ* (critical notes on the Code, by R. Abraham ben David of Posquières [1125–1198])

RaN—R. Nissim ben Jacob of Kairawan (11th century), author of a commentary on some tractates of the Talmud

Rashi—R. Solomon ben Isaac of Troyes (1040–1105), author of commentaries on the Bible and on the Babylonian Talmud

RŠBM—R. Samuel ben Meir, grandson of Rashi, who completed the commentary on some tractates of the Talmud left unfinished by Rashi, and wrote a commentary on the Bible

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ŠEE—*Šulḥan 'aruḵ, 'Eḇen ha-'ezer* (by Joseph Caro [1488–1575])

ŠYD—*Šulḥan 'aruḵ, Yoreh de'ah* (by Joseph Caro [1488–1575])

ṬaZ—*Ṭure zahaḇ* (commentary on the *Šulḥan 'aruḵ,* by David ben Samuel ha-Levi [d. 1667])

TDE—Tanna dĕbe 'Eliyahu

ṬEE—*Ṭur 'Eḇen ha-'ezer* (by Jacob ben Asher [1269–1343])

ThR—*Tĕšuḇoṯ ha-RMBM* (responsa, by Maimonides), ed. A. Freimann, Jerusalem, 1934

Tosafoṯ—Tosafoṯ (critical and explanatory glosses to the Talmud, by the successors of Rashi)

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YJS—Yale Judaica Series

Zeitlin, S.—*Maimonides,* New York, 1935

NOTES

Cross-references consisting of four numbers indicate passages found in the Code outside the present volume, the numbers referring, respectively, to the Book, the Treatise, the Chapter, and the Section where the passage in question occurs.

TREATISE I: LAWS CONCERNING MARRIAGE

Chapter I

1. B. Sanh 57b; Ḳid 9b.

"acquire her"—i.e., by a formal act of taking possession.

"take a wife"—in the Talmud *take* is interpreted to mean acquisition by an act of taking possession, after purchase by payment of the agreed price.

2. B. Ḳid 2a f. See also ThR, p. 161, no. 166.

"money is of Scribal origin"—although it is deducible from the word *take* in the Biblical verse quoted in Sec. 1. Later scholars, including Maimonides' son Abraham. state that he subsequently revised this sentence to read "with money, by a writ, or by an act of intercourse, and all three of them are rules of the Torah." See also below, iii, 20.

3. B. Sanh 89a; Ḳid 5b. See OhG, 9, p. 16.

4. B. Sanh 21a f.

"harlot"—Hebrew *ḳĕḏešah*. The Talmud took the word to refer to a common prostitute. Modern commentators interpret it as temple prostitute, whose activity constituted service to the heathen deity.

5. B. Ker 2a f.

"excision"—divine punishment through sudden or premature death, or, according to others, death without issue.

"Chapter 18 of the Book of Leviticus"—literally "the weekly lesson beginning *After the death"* (Lev. chap. 16–18).

6. B. Yeḇ 21a.

"The daughter of one's son's son"—this rule seems inconsistent with item 9, since there appears to be no difference between the son's son's daughter-in-law and the son's son's daughter. However, forbidden degrees are categorical matters of Scriptural ordination or Scribal enactment, and not matters of logical deduction and reasoning (MM).

7. B. Yeḇ 20a; Deut. 23:4.

"holiness"—based on the verse, *they shall be holy unto their God* (Lev. 21:6).

"after she had been married to another man"—and become thereby forbidden to her first husband (Deut. 24:4).

"Laws Concerning Forbidden Intercourse"—V, 1, xii, 23–24 (YJS, *16*, 86).

8. B. Yeḇ 66b, 54b.

Chapter II

1. B. Nid 47a ff., 46a.

"two hairs"—for details see below, Secs. 16–17.

2. *Ibid.* 65a.

3. B. Yeḇ 80b.

"barren woman"—for details see below, Secs. 5–6.

4. B. Nid 47b; Yeḇ 97a; P. Yeḇ 10.

"less thirty days"—she is then accounted a full twenty years old. This is Maimonides' interpretation of the statement in B. Yeḇ 47b, "The twentieth year of which thirty days are out (*šey-yaṣĕ'u*) is regarded as a full twentieth year," i.e., thirty days are yet to pass to complete the calendar year. Other authorities interpret this statement to mean "of which only thirty days have passed," i.e., the first thirty days of the twentieth year having passed, the year may be regarded the same as a full year.

5. B. Yeḇ 80a.

6. B. Yeḇ 80b.

7. B. Nid 47a; Yeḇ 80b.

"the nose of the breast"—the tapering part of the breast leading to the nipple.

"my teachers"—by this term Maimonides usually refers to his father, Maimon, and to the latter's teacher, Joseph ibn Migaš.

8. B. Nid 47b, 48a.

"no attention need be paid to . . . upper tokens"—i.e., the appearance of the nether token changes her status to that of a maiden, regardless of whether any upper tokens are or are not present.

"the more stringent rules should be applied to her"—for example, she may not refuse her husband, since it is possible that she is no longer a minor; on the other hand, she may not undergo the ritual of *ḥălişah,* since it is possible that she is still a minor.

9. B. Yeḇ 12b.

"after reaching the age of twelve years"—i.e., after outgrowing her minority; pregnancy in a minor was regarded as dangerous for both mother and child (B. Yeḇ 12b).

10. B. Nid 46a.

"two hairs"—for details see below, Sec. 17.

11. B. Yeḇ 80a, 97a.

"less thirty days"—see above, note to Sec. 4.

"a eunuch"—for details see below, Sec. 13.

"thirty-five years and one day"—see above, note to Sec. 4.

12. B. Yeḇ 97a, 80b.

13. B. Yeḇ 80a.

14. B. Yeḇ 80a (according to R. Elijah of Wilno's commentary on ŠEE, 172, Sec. 16); P. Yeḇ 8:5.

"sun-made eunuch"—Hebrew *sĕris ḥammah;* variant interpretation, "fever-

made eunuch," i.e., one whose sexual organs became atrophied as the result of violent fever.

15. B. Nid 48b.

"upper tokens"—the commentators (RABD, MM, etc.) are puzzled by this term, especially since Maimonides himself states elsewhere (PhM to Nid 6:1), "Among us it is held that only women have upper tokens, since men have none," and Rashi to B. Nid 48b. likewise states categorically, "Man has no upper tokens, since his breasts do not undergo any change." MM suggests, rather implausibly, that Maimonides may have thought that man had upper tokens, although these were not to be considered decisive, except when the condition of the nether tokens was unknown.

16–17. B. Nid 52b.

16. "the more stringent rules"—for examples see above, note to Sec. 8.

18. B. Nid 46a.

"as we have explained"—above, Sec. 1.

19–20. B. Nid 48b.

21. P. Sanh 1:2.

"vows of valuation"—a vow to give to the Temple the monetary value of one's own self or of another person. See VI, IV (YJS, *15*, 169 ff.).

"lunar year"—consisting of 354 days and a fraction.

"solar year"—consisting of 365 days and a fraction.

"as we have explained"—III, VIII, VI ff. (YJS, *11*, 26 ff.).

22–23. B. Ḳid 63b.

23. "sacrifice"—due for a transgression committed by error.

"flogging or other penalties"—due for transgressions committed deliberately, to which minors are not liable.

"ordinary vows"—See VI, II (YJS, *15*, 55 ff.).

24. B. Yeḇ 83b.

25. Bik 4:5; B. Yeḇ 83b.

26. Ter 1:2.

Chapter III

1. B. Ḳid 2a, 5b, 4b, 46a.

2. B. Ḳid 5b.

"out of doubt"—according to Rashi, if another man then betrothes her, she requires a geṭ from both men, because either betrothal may have been valid.

3. B. Ḳid 9a.

4. B. Ḳid 9a, 48a.

"in the case of a geṭ"—see below, II, i, 1.

5. B. Ḳid 56b, 10a, 9b; Giṭ 81b; P. Ḳid 1:1; B. Sanh 54a.

"in the presence of two witnesses"—who are required to witness only the retirement of the couple into seclusion, the presumption being that the purpose of this seclusion is sexual union. See below, xi, 12, and note thereto.

"supposedly"—the Yemenite MSS omit this word.

"And the betrothal is valid," etc.—this sentence, like many similar sentences elsewhere in the Code, is omitted in some editions.

6. B. Ḳid 5b, 6a.

"my designated one"—see Lev. 19:20; the term is usually applied to the betrothal of a female slave. The betrothal is valid, however, because in the province of Judea the term later assumed the meaning of "spouse" (see B. Ḳid 6a).

7. B. Ḳid 6a. The validity of these expressions is under question, because it is uncertain whether they do or do not refer to betrothal.

8. B. Ḳid 6a; MSh 4:7.

"as we have explained"—above, Sec. 6.

9. B. Ḳid 7a.

"half of the man"—i.e., a man may marry two or more wives. See below, xiv, 3. After the enactment of R. Gershom's edict banning polygamy, this rule applies only to Eastern Jewry, which does not recognize this ban.

10. B. Ḳid 7b. The difference between the two groups of cases is that in the first group there is no question but that a whole pĕruṭah is involved in the betrothal, while in the second group the statements can be interpreted as involving either a whole pĕruṭah or only part of a pĕruṭah; hence the doubt, since a valid betrothal requires a whole pĕruṭah (above, Sec. 1).

11. B. Ketˌ 46b, 47a, 43b; Yebˌ 112b; Nid 44b.

"her earnings"—literally "the work of her hands."

"and her father has betrothed"—should the deaf-mute do so herself, even if she has come of age, the validity of her betrothal is in doubt. See below, iv, 9.

"by an act of intercourse"—the law here is concerned with the particular legal aspect. In practice, however, the Sages strongly disapproved of child marriages (see below, Sec. 19) and of intercourse as a means of betrothal (B. Kidˌ 12b, and below, Sec. 21).

12. B. Ḳid 79a; Ketˌ 43b.

13. B. Ḳid 45b.

"forbidden to a priest"—a priest may not marry a divorcée, and a High Priest may not marry either a divorcée or a widow (Lev. 21:7).

"even if the father grants his consent"—consent to a *fait accompli* is not really an act of free choice.

"may protest"—the girl, being a minor, may refuse her husband, even though it was not her father who had given her in marriage; and the father may annul the marriage on the ground that it was performed without his leave and consent.

"in the father's presence"—i.e., silent presence, he not having expressed approval or consent verbally.

14. B. Ḳid 79a, 41a, 19a.

"of age out of doubt"—i.e., it is not certain whether she had reached the age of twelve years and six months and thus outgrown her maidenhood; her betrothal is in doubt because if she is of age, her father's act of betrothal is not valid; or if she is still a maiden, her own act of betrothal is not valid.

15. P. Ḳid 3:1; B. Gitˌ 63b. The difference between the two cases is the following: Witnesses are necessary either to prove the truth of an act or as

part of the procedure which makes the act valid. In the latter case the act is valid without witnesses, if the parties concerned acknowledge it, and if no one else protests it. In the former case the validity of the act depends on its certification by the witnesses. Thus acceptance of a betrothal token is not valid unless two witnesses are present, regardless of whether or not anyone questions it.

16. B. Ḳid 43a.

"may act also as witnesses to the betrothal"—notwithstanding the principle that a principal's agent is equivalent to the principal himself, and just as he himself requires witnesses so should his agents. The two functions are thus held to be consecutive, and not simultaneous—i.e., having brought about the betrothal, the agents have completed their agential mission, and may assume their new role as witnesses.

17. B. Ḳid 11b; Giṭ 23b.

"the word *also*"—according to Talmudic hermeneutics, the word *also* in the Torah, where seemingly superfluous, always implies that something more than what is mentioned in the text is included, but the added thing must be equal in some respects to the original matter. Hence the conclusion that the agent must likewise be a son of the covenant.

"he himself is not subject to the laws of marriage and divorce"—the rule being that a man cannot act for another person in a matter in which he cannot act for himself (Rashi on B. Ḳid 41a).

18. B. Ḳid 42a, 6a.

"indeed he may even remain silent"—the Yemenite MSS omit this clause.

"whether the bridegroom negotiates directly with the bride, or whether an agent negotiates with an agent"—variant reading: "just as the bridegroom negotiates with the bride, so may an agent negotiate with an agent."

19. B. Ḳid 4a, and Rashi *ad loc.*

20. B. Ḳid 9b.

"so does the document . . . complete the betrothal"—and she is legally married, so that a geṭ is necessary to dissolve the marriage.

" 'taking' signifies acquisition with money"—i.e., since in the case of the field *take* refers to money, because money is explicitly mentioned, therefore *take* in other transactions must also imply purchase with money.

"although it may be said . . . by the Scribes"—this sentence is omitted in some MSS. Cf. above, i, 2, and note thereto.

21–22. B. Ḳid 12b.

21. "flogging for disobedience"—literally "lashes of rebellion," flogging prescribed by Rabbinic law, the number of lashes being left to the discretion of the court, in contradistinction to the Biblical lashes which are limited to thirty-nine (forty less one).

22. "similar to the harlot"—see above, i, 4.

23. B. Pes 7b.

24. B. Keṯ 7b; P. Soṭ 8:5.

"who has prohibited to us those that are espoused"—that is, without the further ceremony of the nuptial canopy and the accompanying benedictions.

"beer"—a spirituous liquor made out of dates or barley.

Chapter IV

1. B. Ḳid 2b; BB 48b; Ḳid 51a, 52a.

"On the other hand," etc.—the difference between coercion exerted upon the husband and coercion exerted upon the wife is that in the husband's case there is a remedy, for he has the power to divorce her. In the wife's case this remedy is absent, because she does not have the power to divorce him.

2. B. Neḏ 6b.

"And thou"—the doubt here is whether this is a declaration or a question.

"what sayest thou in this matter?"—she may have been merely holding the token while he was proposing to her, and had not yet made up her mind whether to answer yea or nay.

3–4. B. Ḳid 8b.

3. "before him"—where he can recover the coin; her rejecting the coin altogether is an obvious gesture of denial of his proposal.

"Give it to my father"—without adding that the father is to accept the coin as a token of her betrothal; hence her intention remains unclear.

4. "on the rock"—which is not her property; therefore telling him to put it there is tantamount to a refusal.

"she is betrothed"—since her exclusive ownership of the rock extends also to anything located on that rock. This does not apply to real estate owned in partnership with him, although there is the possibility that at the moment of proposal he had temporarily ceded his share of the rock to her, hence the doubt.

"even if that poor man is dependent on her for support"—just as it is her duty to support that poor man, so it is his duty to succor any poor man who is destitute, hence the gift to the poor man is something due to the latter, and cannot serve as token of betrothal.

"If the dog is running after her"—on the one hand, it is the man's duty to save her from the dog by distracting the animal's attention from her, hence he gave her nothing; on the other hand, she may have meant, "I am delighted to have you rescue me, and I accept your token and permit you to use it to distract the dog," hence the doubt.

5. B. Ḳid 9a.

6. B. Ḳid 65a; Sanh 24b, 25b.

"disqualified according to the Torah," etc.—a witness is disqualified according to the Torah when he is shown to have committed a transgression for which the Torah prescribes the penalty of flogging; he is disqualified according to Scribal law when he is shown to have committed an offence prohibited by Scribal law; and his Scriptural disqualification is in doubt when the two witnesses testifying that he did transgress against the Torah are contradicted by two other witnesses who testify that he did not.

"she must be compelled to accept a geṭ"—KM is puzzled by this phrase, which varies from "she requires a geṭ" in the preceding sentence; she requires a geṭ only if she wishes to remarry, and requires none otherwise, hence compulsion seems not to be applicable to her. KM therefore prefers the variant reading, "he must be compelled to give her a geṭ."

7. B. Ḳid 50b; Yeḇ 107b; Giṭ 65a.

"is no longer under her father's authority"—see above, iii, 12.

"refusal"—see the following Section.

"exceedingly simple-minded"—but not to the extent of being an imbecile.

8. B. Yeḇ 101b, 112b.

"in the Laws Concerning Divorce"—see below, ii, xi, 8.

"is not completely valid"—since the Torah speaks only of a female minor betrothed by her father, whereas this girl's father is dead.

9. B. Yeḇ 112b; P. Yeḇ 14:1.

"Therefore, if a normal man," etc.—the principle is that a betrothal that is valid according to the Torah supersedes a betrothal that is valid only according to Scribal law. See also ii, xi, 6.

"there is no betrothal," etc.—loss of hearing and speech does not preclude an affectionate and devoted marital relationship; insanity, on the other hand, make such a relationship impossible.

10. B. Yeḇ 79b.

"the betrothal is completely valid"—at least insofar as the wife of such an assuredly unfruitful marriage would require a geṭ if she wishes to remarry.

11. B. Yeḇ 72a.

12. B. Ḳid 67b, 68a.

"a menstruating woman"—since marriage with her may not be consummated until the cessation of her menses and her subsequent purification.

13. B. Giṭ 89b.

"she is to be believed"—and it is assumed that she had received a geṭ from her husband before her new betrothal.

14. B. Ḳid 66b; Yeḇ 92b.

"secondary forbidden degrees"—see above, i, 6.

"forbidden by a negative or positive commandment"—see above, i, 7–8.

"levir"—see Deut. 25:5. In this case the widow's co-wife may not be married to any of her surviving brothers-in-law, since levirate marriage applies only to the widow herself (B. Yeḇ 11a).

15. B. Ḳid 68a, 66b; Yeḇ 45a, 47b.

"apostate"—one who has defected from Judaism.

"requires a geṭ from him"—because even though the marriage is valid, she may not abide with him.

16. B. Giṭ 43a, 43b.

"half-bondswoman and half-free"—for example, if she belonged to two partners, one of whom emancipated her and the other did not.

"the validity of both betrothals is in doubt"—since before her emancipation she was half-slave, there remains some doubt as to whether her first betrothal had taken effect. If it did, the second betrothal is assuredly of no effect. If it did not, the second is valid. Hence the doubt.

17. B. Ker 11a; Giṭ 43a.

"mentioned in the Torah"—Lev. 19:20; that is, the half-free bondswoman referred to in the preceding Section.

"betrothed by a Hebrew slave"—who is allowed to marry a bondswoman; hence his betrothal takes effect upon both halves of her, the slave and the free, and is therefore completely valid.

"in doubt"—because the question was asked in the Talmud and no positive

answer was given. There is doubt therefore as to whether his betrothal can apply to his half-slave half.

18. B. Er 65a.

"The drunkenness of Lot"—see Gen. 19:30–38. Cf. XII, 1, xxix, 18 (YJS, *5*, 106).

"deliberation"—whether he has indeed reached that degree of drunkenness.

19. B. Ḳid 46a, 12a.

20. B. Ḳid 50a.

"original betrothal"—he sent these presents not in order to effect a new and valid betrothal, but in pursuance of the original betrothal, in the mistaken belief that it was valid.

21. B. Giṭ 77a, 78a; Ḳid 8b.

"the betrothal is in doubt"—see above, Sec. 4.

22. B. Giṭ 78a.

Chapter V

1. B. Ḳid 56b; Pes 6b, 21b.

"forbidden for benefit"—i.e., forbidden not only for consumption but also for any other purpose, for example, as dog-food or for sale.

"leaven"—see III, v, i, 2 (YJS, *14*, 324).

"meat cooked with milk"—see V, II, ix, 1, 17 (YJS, *16*, 195, 199–200).

"the sixth hour"—i.e., the hour before midday. According to the Torah, the eating of leaven is forbidden only after midday of the 14th of Nisan.

2. B. Ḳid 56b, 58a; AZ 34b.

"an ox condemned to death by stoning"—see Exod. 21:28. The different rulings in the two cases are based on the consideration that dung in the sacrificial animal's intestines makes it appear fatter and thus more valuable, and is therefore an important factor in its worth, whereas the worth of the stoned ox is immaterial—the only thing that counts is its destruction, so that it would never again gore a human being to death. The basic reason for the difference is the Rabbis' constant anxiety to prohibit anything even remotely connected with idolatry, down to the manure of sacrificial animals, however little or nonexistent its monetary value.

3. B. Ḳid 52a, 58a, 52b.

"Sabbatical years"—see Lev. 25:1–7.

"Red Heifer"—see Num. 19:1–7.

"water of purification"—see Num. 19:7.

"in error"—i.e., not knowing that the object was dedicated.

"misusing sacred property"—see Lev. 5:15.

4. B. Ḳid 52b.

"second tithe"—see Deut. 14:23 ff.

"rendered profane"—the second tithe is sacred and may be consumed only in Jerusalem; it may, however, be redeemed with money, which thus assumes its sanctity, while the original produce becomes profane and may be put to ordinary use. See Deut. 14:25.

5. B. Ḳid 52b, 53a.

"only for consumption"—the sacred offerings, unlike the other offerings listed in the next paragraph, do not become the priest's private property, but are merely a bounty bestowed upon him out of the Lord's own share, to be consumed by the priest and to be used for no other purpose.

6. B. Ḳid 58b.

"The gifts"—i.e., those mentioned in the second paragraph of the preceding Section.

"separated"—from the rest of the produce, in order to give them to the priest.

"goodwill benefit"—see below, note to x, 10.

7. B. Ḳid 52a.

"violence"—the difference between robbery and violence is that in the latter case the culprit, though willing to pay, takes the object from the owner against his will.

"it is known"—to the witnesses attesting the betrothal.

"the betrothal is valid"—even though the rule is that the owner's despair of recovery, alone, does not confer the right of possession upon the culprit (B. BḲ 66a). The woman, however, has acquired the article from the latter in good faith, hence her ownership of it is lawful.

8–9. B. Ḳid 52b.

8. "in doubt"—since one can never be sure whether the owner is particular or not.

10. B. Ḳid 13a, 52b.

"remains silent"—her silence is evidence that she has forgiven his expropriation of her property, and is accepting the article as a token of betrothal, in accordance with the preceding negotiations. If no prior negotiations had taken place, silence is not enough, and a positive oral agreement is necessary; otherwise her acceptance of the article constitutes no more than recovery of her stolen property.

11. B. Ḳid 12b.

"nothing has taken place"—in the latter case, her acceptance of the article signifies merely her willingness to hold it on deposit, and thus concludes the transaction. The proposal of marriage which follows is a new matter, and her silence cannot be taken for assent.

12. B. Ḳid 13a.

"the betrothal is valid"—and his debt to her remains unpaid, so that she may still demand repayment of it.

"nothing has passed"—no valid token of betrothal has passed from him to her; all that has taken place was repayment of his debt to her.

13. B. Ḳid 47a.

"by a document"—which might be considered as something tangible and negotiable.

"there is no longer anything in existence"—when A borrows a tool or a similar object from B, the very same object remains in A's hands, and can be returned by A at any time at B's demand. When A borrows money from B, his purpose is to spend it, and repay B with equivalent coins obtained from another transaction; thus, strictly speaking, A gives back to B not B's own property, but its equivalent, which therefore cannot serve as a token of betrothal.

14. B. Ḳid 19a.

15. B. Ḳid 6b.

"he lends her now"—the emphasis is on "now," i.e., at the time the loan is negotiated and the marriage proposal made.

"manner . . . unworthy of consideration"—the reference is to Alfasi and Rashi (to B. Ḳid 6b).

16. B. Ḳid 46a.

"the betrothal is valid"—because the assumption is that the woman consented to be betrothed with that object in his statement, the pĕruṭah, which can serve as a valid token of betrothal.

17. B. Ḳid 48a; Giṭ 4a.

"in the presence of all three of them"—i.e., the debtor, the man, and the woman. This constitutes a valid transfer of title; see XII 1, vi, 8 (YJS, 5, 25–6).

18. B. Ḳid 47b.

"is still in her possession"—i.e., it has not been lost or stolen; if it is lost, the situation is analogous to that of a man who betrothes a woman with a loan (see above, Sec. 13). I follow the reading of the Yemenite MSS. The printed text reads, "provided that there is a pĕruṭah, or a pĕruṭah's worth, of the bailment or of the object held on loan, still in her possession."

19. B. Ḳid 63a.

"is equivalent to a loan"—the suitor's status is that of a laborer hired to perform a task (in this case, to plead the woman's case before the governor); the laborer's wages, so long as they are unpaid, are regarded as a loan, repayable by his employer, and betrothal with a loan is invalid. See the next Section.

20. B. Ḳid 48a, which discusses the controversy as to whether a laborer's wages fall due in a lump sum at the completion of his work, or piecemeal, as he performs each portion of his task. According to the latter view, though the wages are paid in a lump sum at the end, the employer becomes liable for each portion of the wages as it is earned by the laborer. At the end, the former thus repays an accumulated debt owed to the latter.

21–22. B. Ḳid 7a.

21. "as a gift"—a variant reading omits this phrase, implying that the same rule applies if the denar is given as a loan.

22. "an important person"—Rashi (to B. Ḳid 7a) explains, "who does not customarily accept gifts"; hence his acceptance of her gift constitutes a signal compliment to her.

23. B. Ḳid 8a f.

"nor was the pledge given to her to be her own"—therefore it is a case of betrothal with a debt, which is not valid. The pledge is not his own because he must return it when the debt is paid.

"limited title"—he is liable for any damage to it, hence he has some title to it until he returns it.

24. B. Ḳid 6b.

25. B. Ḳid 12b.

"on account of the bundle"—see above, iv, 19.

26–27. B. Ḳid 46a.

26. "If one of these dates is worth a pĕruṭah"—since he has used the

formula "Be thou betrothed unto me" separately for each date, each declaration is a separate proposal, and unless at least one of the dates—not the three together—is worth a pĕruṭah, the act is invalid.

"for it is possible"—see above, iv, 19.

27. "If she has been eating them"—while he was speaking and before his proposal has come into force.

"has only doubtful validity"—since the last date, though worth only one-third of a pĕruṭah in that place, may be worth a full pĕruṭah in some other place.

28. B. Ḳid 47a.

"she has been eating them"—he did not hand her the dates until after the completion of his proposal.

29. B. Ḳid 48b.

"water . . . wine . . . oil"—a cupful of water is of negligible value, hence it has no separate importance and becomes a mere adjunct to its receptacle. Wine is of greater value, but when in a cup, the cup is still the more important item, even though the wine does not become an adjunct to it. Oil is put into the cup not for drinking but for storage, so that the cup becomes of secondary importance.

"is in doubt"—since the oil may be worth a pĕruṭah in some other place.

Chapter VI

1. B. BM 94a.

2. *Ibid.*; Ḳid 61a.

4. "within the time needed to make an utterance"—the time it takes a disciple to greet his teacher by saying "Peace be unto you, Rabbi". See B. Naz 20b. Even if the pause between betrothal and condition is but a few moments, the betrothal is valid.

5. B. Ḳid 61a; Giṭ 76a.

6. B. Giṭ 75b.

7. B. BM 94a; Giṭ 84a.

"the abyss"—see Gen. 1:2.

8. B. Giṭ 84b; Ḳid 19b.

"forbidden by the Torah"—and the general principle is that a condition involving the doing of something that is forbidden by the Torah is null and void. But see the next Section.

9. B. Ḳid 19b; Keṯ 56a.

"except in money matters"—the exception is made on the ground that in the case of money one can waive his right to it. See the next Section.

10. B. Keṯ 56a.

"food, raiment, and conjugal rights"—see Exod. 21:10.

"a comely captive woman"—see Deut. 21:11.

"it is his condition that is null and void"—and the woman is validly betrothed, as if no condition had been stipulated. The difference between the case in Sec. 8 and the case in Sec. 10 is this: In the former case the woman has an alternative which does not contradict the Torah, i.e., she can refuse

to eat the forbidden food and thus not become betrothed—not an untenable situation. In the latter case, his condition contradicts, according to the Torah, the action itself, i.e., when he betrothes a woman, the betrothal itself, according to the Torah, obligates him to something which his condition negates. Hence it is as if he had never stipulated such a condition.

11–12. B. Giṭ 84b.

11. In this case the condition involves a forbidden action on the part of a third person who is not under the woman's control—even if she should entreat that person, the latter is free to refuse.

14. B. Ḳid 61a.

"Some later Geonim"—Isaac Alfasi in his responsum 31; Samuel ben Meir (RŠBM) in his commentary on B. BB 137b.

"the earlier Geonim"—the author of the *Šĕ'eltoṯ* (on the portion *Maṭṭoṯ*); *Halaḵoṯ gĕḏoloṯ* (ed. Hildesheimer, p. 319). See also the stricture of RABD on XII, II, iii, 9, where he finds support for the opinion of the early Geonim.

15. B. Ḳid 60a; Giṭ 74a.

"Nisan . . . Elul"—the first and sixth months of the civil year, respectively.

16. B. Ḳid 60b.

"as of now"—this formula lends the fulfillment of the condition a retroactive effect. The same is true if he uses the term "provided that" (see the next Section).

17. B. Giṭ 84a, 74a; and Alfasi to Giṭ chap. 7.

Chapter VII

1. B. Ḳid 63a.

"my father consents"—according to Maimonides, this means explicit consent; therefore, if he is silent, there is no betrothal, even though normally silence indicates consent. RABD disagrees, and says that in this case, too, silence indicates consent. See also MM and KM *ad loc.*

2–4. B. Ḳid 60b.

2. "one *ḳor* of land"—a piece of land that can be sown with one kor (= 30 sĕ'ah) of grain.

"to cause her harm"—she may subsequently marry B and have children by him. If A should then reveal that he did own such property, he would invalidate her marriage, and cause the children to be branded as bastards.

3. "for it is possible that he does own it there"—some authorities disagree and point out that when no definite locality is specified, it is possible to conceal ownership of real estate without too much risk of discovery. When the location of the real property is stated, however, perjury is foolish, since land cannot be concealed and the identity of the owner is common knowledge; hence if his denial goes unchallenged, the betrothal should be assuredly invalid. As for ownership of money, some authorities think that specification of place is immaterial, since money is easily transportable, and that such specification constitutes a silent admission that he does own such a sum of money, though on deposit somewhere else; hence the betrothal should be assuredly valid.

5. B. Ḳid 61a.

"depressions . . . elevations"—literally "clefts and rocks."

6. B. Keṯ 72b; P. Keṯ 7:7.

"three vows"—denial of meat and wine, and of attractive dress, is bound to mar the wife's good looks and spoil the husband's happiness in the marriage; hence it constitutes a valid objection.

"the fruit of the carob tree"—this fruit was considered harmful, and ordinarily the husband should be pleased with such a vow. Since, however, he had said, "not . . . any kind of vow," even such a beneficial vow constitutes a valid objection.

7. B. Keṯ 75a.

"Laws Concerning Entrance into the Sanctuary"—VIII, III, viii (YJS, *12*, 113–19).

"close to the hair"—so that it can be covered up by the hair.

8. B. Keṯ 72b, 74b.

"absolves her from it"—a Sage may absolve a person from a vow under certain conditions; see VI, II, iv, 5 (YJS, *15*, 73–74).

"the betrothal is valid"—since the Sage's absolution is retroactive, and eradicates the vow as if it had never been made.

9. B. Keṯ 74b.

"the betrothal is invalid"—the cure effected by a physician is not analogous to a Sage's absolution from a vow, since the cure does not eradicate the fact that the defect had existed, and the husband might continually visualize it afresh.

10–12. B. Ḳid 59a f.

10. "even if the money is used up"—and thus, when the betrothal becomes effective, he has not in fact given her anything, making it seem as if he were betrothing her with the remission of a loan, which is invalid (above, v, 13). The reason the betrothal is valid here is that while in the other case the money came to her originally as a loan, later remitted in token of betrothal, in this case the money was given to her at the outset in token of betrothal, and became immediately her own property (see Rashi *ad loc.*).

11. See above, iv, 12–13.

12. "as of now, and after thirty days"—this formula is ambiguous; it may mean "as of now, provided that I do not change my mind within thirty days," in which case the second betrothal is void; or "after thirty days" may be meant as an amendment of "as of now," which would make the second betrothal valid. Hence the validity of both betrothals is in doubt.

"both must give her a geṭ"—if she wants to marry C. If she wants to marry A, B must give her a geṭ, and vice versa (see ṬEE 40).

13. B. Giṭ 82b. The difference between the two cases is that in the former case he simply did not make his betrothal total, and there is a divergence of opinion in the Talmud as to whether such a partial betrothal is valid. The prevailing view is that it is invalid, and is not analogous to a deferred ("after thirty days") betrothal, where the suspension of the betrothal is only temporary, and does not diminish the eventual total effectiveness of it. In the latter case he has stipulated a condition which cannot be fulfilled without violating the Torah, and such a condition is null and void. See above, vi, 9–10.

14. B. Ḳid 62b, 62a.

"upon thy sister's death"—her sister is already married to this man, who may not be married to two sisters at the same time (Lev. 18:18).

"he cannot now contract a valid betrothal with her"—in each case a betrothal at present would be invalid. Therefore, even though the betrothal is to become effective at such a time in the future when it will be valid, it remains invalid now, and we must go by the status of the parties at present, and not in the future.

15. "the betrothal is valid"—the Yemenite MSS add "doubtfully."

"betrothed her now"—i.e., before ḥălişah, when the betrothal would be doubtfully valid (above, iv, 14). Hence the betrothal, as deferred after the ḥălişah ceremony, should be at least no less valid, and the deferment should certainly not impair whatever validity it may possess.

16. B. Ḳid 62a f.

"the betrothal is valid"—unlike the former case, where the other party to the betrothal contract is not yet in existence, nor is there any certainty that there will be a pregnancy and a delivery. According to Maimonides, an unborn child cannot be considered a legal person. Therefore, while a betrothal contracted in behalf of a fetus is binding, it should nevertheless be repeated after birth to make it fully valid.

17. B. Ḳid 8a.

"a copper denar"—the usual denar was of silver.

"underweight"—chipped or rubbed from use, and thus reduced in weight.

"he must exchange it"—and the betrothal remains valid.

18. B. Ḳid 7b, 9a.

"she is betrothed the moment she accepts them"—normally, when an object of undefined value is given as a token of betrothal, it must be appraised first, otherwise the woman might not feel confident, and might have some doubts in her mind. In the case of silk garments, the woman is certain to desire them so much that her mind would be confident even without an appraisal. Others suggest that the value of silk is known to everyone, and she would normally have no need to be reassured by an appraisal.

19. Tos Ḳid 2:9; Meiri on B. Ḳid 8a; XII, 1, 1 (YJS, 5, 69–70).

20. B. Ḳeṭ 99a. The principle behind these rules is that if the agent makes any changes in what he was commissioned to do, his agency becomes invalid; see XII, iv, i, 2 (YJS, 5, 208).

21. B. Ḳid 50a, 45b.

"in such-and-such a place"—in each case, in the first alternative, the reference to the place is an integral part of the principal's directive to the agent; in the second alternative, the directive is merely to effect the betrothal —the reference to the place is a separate sentence meant to help the agent in locating the other party.

22. B. Neḏ 87a.

"the betrothal remains valid"—even though a retraction pronounced immediately after the formula of transaction is generally effective, and cancels the transaction. Marriage, however, is too grave a matter to be entered into lightly, without mature reflection; besides, there is always the remedy of divorce, although this entails certain obligations—one more reason for mature deliberation.

23. B. Ket 73a, 74a.

"with less than a pĕruṭah or with a loan"—both invalid betrothals. See above, iii, 1; v, 13.

"has intercourse with her . . . in the presence of witnesses"—not literally: the fact that the couple retire, in the presence of witnesses, into seclusion, is sufficient. See above, iii, 5.

"observance of a commandment"—to marry lawfully.

Chapter VIII

1. B. Ḳid 48b f.; Ket 110b.

"town dweller . . . city dweller"—Rashi explains that a town dweller, accustomed to purer air, dense greenery, and ample room, may object to the foul air and congestion in a large city.

"hairdresser . . . baker"—following the interpretation of the Tosafoṭ to B. Ḳid 49a, *s. v. may mĕgaddelet*. While to have a daughter who is a hairdresser is in itself an advantage, it is also a drawback, because a woman engaged in such a profession perforce attends many people in the neighborhood, and is liable to be the subject or the carrier of gossip. The same is true of each of the other conditions—it can serve as an advantage or as a disadvantage; therefore either party can insist on the condition, on the ground that it is an advantage, and consequently the absence of the condition constitutes fraud or deceit, and a betrothal based on fraud or deceit is invalid.

2. B. Ḳid 49b.

3. Tos Ḳid 2:2.

"a tanner"—a profession associated with grime and unpleasant odors.

4. B. Ḳid 49b.

5. B. Ḳid 49b.

"Ben 'Azzai . . . Ben Zoma . . . Rabbi 'Aḳiba"—outstanding scholars of the first century C. E., mentioned frequently in the Mishnah and the Talmud.

"a matter of learning"—according to Rashi, *ad loc.*, this refers to matters involving logic and common sense.

"Abner the son of Ner"—King Saul's commander-in-chief (1 Sam. 26:6).

"Joab"—King David's commander-in-chief (2 Sam. 8:16).

"Rabbi Eleazar ben Ḥarsom or Rabbi Eleazar ben Azariah"—scholars of the first century C. E., who were very wealthy; B. Yoma 35b, B. Shab 54b.

6. B. Ḳid 62a; Tos Ḳid 2:6.

"she herself did not deceive him"—since he deceived himself.

Chapter IX

1. B. Ḳid 50b.

"simultaneously"—i.e., by saying, "Behold, both of you are betrothed unto me."

"they are of the prohibited degrees"—had he betrothed them not simultaneously but one after the other, the first betrothal would have been valid,

while the second would have been without any effect, because the betrothal of the first would have made the second forbidden. If they are betrothed simultaneously, each one is obviously forbidden, and the rule applies that if several acts are ineffective when performed consecutively, they are likewise ineffective when performed simultaneously.

2–3. B. Ḳid 51a.

3. In theory he has betrothed only one of the sisters, and therefore her betrothal is valid. In practice, however, he cannot consummate the marriage, for inasmuch as he did not specify which sister he was betrothing, either one of them may be his wife's sister and thus forbidden to him. Hence he cannot consummate the marriage with either one of them, and both sisters require a geṭ from him.

4–5. B. Ḳid 59b.

4. "both require a geṭ"—since either one of them may have been validly betrothed, depending upon who was first.

"and are forbidden to A"—because one may not marry the sister of his divorced wife.

5. "When does this apply?"—that if the two men agree, one may give her a geṭ, and the other may then consummate the marriage.

"forbidden to both"—since neither one of such close relatives may marry the other's divorced wife. See V, 1, ii, 1 (YJS, *16*, 16–17).

6. B. Naz 12a; DER 1:1. The principle behind these rules is that if a man betrothes a woman, her close relatives—i.e., her mother, her maternal grandmother, her paternal grandmother, her daughter, her son's daughter, and her daughter's daughter—become forbidden to him.

7. B. Ḳid 52a.

"from all of the brothers"—that is, a geṭ from each one of the five brothers, seeing that no particular son and no particular daughter had been specified.

8. B. Ḳid 51b, 64b.

"unless he says explicitly"—the minor daughter is still the concern of her father, while the one who has come of age is now on her own. Hence when he does not specify, it is assumed that he has acted in behalf of the daughter who is still his concern.

9. B. Ḳid 64b.

"by two wives"—whom he had married consecutively, so that the eldest child of the set borne by the second wife is younger than the youngest child of the set borne by the first wife.

"under his authority"—that is, had not yet come of age.

"for the meaning . . . is," etc.—the general rule being that "a man does not place himself in a position of doubt" (R. Jose's view, B. Ḳid 64b).

10. B. Ḳid 64a.

11. "after the daughter had come of age"—and is no longer under his authority. Nevertheless, he is to be believed, on the principle "The mouth that forbids is the mouth that permits."

12. B. Ḳid 63b.

"he is to be believed"—a false claim on his part would be useless, since the father could easily demolish it by saying that his appearance is not identical with that of the true bridegroom.

"even to the extent"—although in other cases the validity of the claim extends only as far as to require a get in order to release her, but not as far as to allow consummation of the marriage.

13. B. Ket 23a.

"he is not to be believed"—because once she is married, her status has been established with the consent of the Sages. Thereafter one contrary witness alone does not have the power to bring this status into question.

14. B. Ḳid 63b.

"to any man but him"—normally a man may remarry his divorced wife, so long as she has not married someone else in the meantime. In this case, however, this is forbidden, because it may lead to collusion.

"overcome by his passion"—and had really never betrothed her.

15–16. B. Ḳid 65a.

15. "the daughter is permitted to his kinsmen"—because the claim that she is betrothed is made not by her but by her mother. Only the person who makes the claim for himself becomes thereby forbidden.

16. "as we have explained"—above, iv, 6.

"requested"—not compelled, since the betrothal is not amenable to proof.

"must be compelled"—since his voluntary action constitutes an admission that her claim of betrothal is valid.

"her kĕṯubbah"—assuming that in that particular place it is the custom to execute the kĕṯubbah before the betrothal, so that the document in itself cannot serve as evidence of betrothal. Where the custom is to execute the document after betrothal, it is in itself proof positive that betrothal had taken place. See below, Sec. 29.

17. B. Ḳid 58b, 59a.

18–19. P. Ḳid 3:1. See above, note to Sec. 15.

20. B. Ḳid 59b, 78b f.

"is doubtfully betrothed"—and requires a get.

21. B. Yeb 18b.

"by way of sexual intercourse"—such a mode of betrothal, while legally valid, was condemned by the Sages. See above, iii, 21.

22–27. B. Giṯ 88b–89a.

22. "lamps lit"—an indication of a rejoicing (B. Sanh 32b).

23. "reasonable explanation"—that could explain why the rumor should be regarded as uncertain.

"betrothed conditionally"—so that it is possible that subsequently the condition was not fulfilled, thus making the betrothal invalid.

26. "He has taken back his divorced spouse after she had been espoused by another man"—which is forbidden. See below, II, xi, 12.

27. "it matters not which"—since both betrothals are based only on rumor, the objection mentioned at the end of Sec. 26 is too remote to merit consideration.

28. B. Ḳid 50b; Tosafoṯ *ad loc., s.v. Mĕḳaddĕše;* and above, iv, 20.

"after the espousal"—i.e., it is the custom of only some of the people to do so. Though only a minority does so, it is sufficient ground for apprehension of a betrothal that requires a get. See note to the next Section.

29. B. Ket 23a; Ḳid 50b.

"there is reason for apprehension"—although the majority write the

kĕṭubbah first, the fact that the minority does the opposite carries sufficient weight to justify this apprehension.

"if there is no scribe there"—so that there is added reason to believe that the custom of the majority was followed, and the kĕṭubbah was written when a scribe was available, even if there had not yet been any betrothal.

30. B. Keṭ 23a.

31. B. Ḳid 65b; Keṭ 22a.

"seems . . . to have substance"—B. Keṭ 22a cites an example of a plausible reason: "It once happened that a great woman, meaning one of great beauty, was eagerly sought by men for betrothal, but dismissed them with the statement, 'I am already betrothed.' After a while, however, she proceeded to have herself betrothed to a man, whereupon the Sages inquired of her, 'For what reason have you acted thus?' She replied, 'At first, when I was approached by men who were unsuitable for me, I said I was already betrothed. Now, however, having been sought out by suitable men, I proceeded to have myself betrothed.' "

Chapter X

1. B. Ḳid 10a; Yeḇ 55b.

"flogging for disobedience"—see above, note to iii, 21.

"initiates . . . with her"—for a definition of this term see V, 1, i, 10 (YJS, *16*, 12).

2. B. Ḳid 5a f.; Keṭ 48b, 56a.

"the nuptials are not yet complete"—later authorities dispute this rule. While below, Sec. 6, Maimonides suggests that the nuptials should be delayed until she is fit again, they maintain that her condition does not affect the nuptials, but that the groom should be informed about it. See ŠEE 61:1, 2.

3. B. Keṭ 7b; see above, iii, 23–24.

"she who was barren"—i.e., Zion.

4. B. Ber 42a; Shab 110a.

"a myrtle branch"—for the sake of its fragrance.

5. B. Keṭ 7b, 8b.

6. B. Keṭ 7b.

"her purification"—for the purification ritual see V, 1, xi, 16 (YJS, *16*, 79).

7. B. BB 167b; Keṭ 54b, 11a, 8a.

"and only then is he permitted to approach her"—since without a kĕṭubbah seclusion with her is sheer harlotry. Cf. below, Sec. 9.

"he . . . must pay the scribe's fee"—since he is the beneficiary of the contract so long as the marriage endures.

"the statutory kĕṭubbah"—literally "the root of the kĕṭubbah," the minimum required by law.

"think lightly of divorcing her"—since according to Biblical law her consent to the divorce is not necessary; the husband's duty to repay the kĕṭubbah thus serves as a measure of restraint and as a protection for the wife. The regulations governing the kĕṭubbah remained unchanged even after R. Gershom's reform which forbade divorce without the wife's consent.

8. B. Ḳid 11a.

"Laws Concerning 'Eruḇ"—III, II, i, 12 (YJS, *14*, 203)

9. B. Ket̠ 56b, 55a, 7a.

"symbolic act of barter"—see XII, I, v, 5 (YJS, *5*, 21).

10. B. Ket̠ 57a; BḲ 89b.

"goodwill benefit"—*ṭoḇaṯ hăna'ah*, or optional right. Both the woman who sells her kĕṯubbah and the purchaser of it have only an optional right to it; the woman loses her right if she predeceases her husband, who is her heir in law; the purchaser loses his investment if the kĕṯubbah becomes null and void upon the woman's decease in her husband's lifetime. Hence the purchaser would ordinarily pay the woman less than the kĕṯubbah's face value, in the hope that the prospective profit would compensate him for the risk which he is undertaking. Both the woman and the purchaser are thus undertaking a gamble, or, in a manner of speaking, conferring a benefit upon each other, the woman by selling a right for less than it might eventually be worth, and the purchaser by paying cash for a right that may be eventually canceled. So long, however, as the kĕṯubbah is payable, the husband's obligation to pay is not affected by the sale.

11. B. Ket̠ 54b, 43b, 89b; BM 17b f.

"the kĕṯubbah alone does not make the marriage"—the kĕṯubbah is only a precondition to marriage.

"may not collect the supplementary amount"—which is not statutory and is merely a token of his affection for her. Since no marriage has taken place and he had no opportunity to gratify his affection, she has no rightful claim to the supplement.

"as we have explained"—above, iii, 11.

12. B. Ket̠ 7b; P. Ket̠ 1:1.

13. Tos Ber 7:15; B. MḲ 8b.

"may not be combined"—one should not celebrate several occasions at once, because one would detract from the other. See the next Section. In the case of two or more weddings, there is the additional reason to avoid bruised feelings and jealousy.

14. P. Ket̠ 1:1; B. Ket̠ 5a, 3b; Beṣ 37a; MḲ 8b.

"on Friday"—later authorities permit it, and speak of a widespread custom to have the wedding on Friday, provided preparations have been started three days earlier and completed before the onset of the Sabbath (ŠEE, 64, 3).

"Needless to say"—since marriage is a civil contract and hence by definition may not be negotiated on the Sabbath.

"as we have explained"—III, IV, vii, 16 (YJS, *14*, 310).

"as it is said"—the proof is drawn from the fact that Laban would not give his two daughters in marriage one immediately after the other, but insisted on waiting for Leah's week of festivities to be over.

15. B. BḲ 82a; Ket̠ 2a, 5a.

"on Monday and Thursday"—on which days, according to tradition, Ezra the Scribe had ordained that the courts should be in session, because on these days people used to assemble from the surrounding villages to listen to the reading of the Torah.

"challenge her virginity"—see below, xi, 9.

"early next morning"—while he is still angry. Should there be any delay,

she might succeed in appeasing him; yet if she had played the harlot, he may not lawfully retain her as his wife.

16. "it is not proper to do so"—see above, iii, 19.

17. B. Ketṣ 57b; P. Ketṣ 5:3. The difference between a virgin and a nonvirgin (i.e., a widow or a divorcée) is that the latter does not need so much preparation, since she already has most of the necessities from her previous marriage.

18. B. Ketṣ 67b; P. Ketṣ 5:3.

"his equipment"—i.e., the supplies and appurtenances for the wedding and the accompanying feast.

19. B. Ketṣ 57a, 2a.

"on those days," etc.—see above, Sec. 14.

"he is not liable"—so long as the delay is due to causes beyond their control, he is not liable for her maintenance.

Chapter XI

1. B. Ketṣ 11a.

"once she is married"—i.e., once she has entered the bridal chamber, even if she had no intercourse with her first husband.

"three years and one day"—her virginity cannot be permanently impaired before that age. See below, Sec. 3.

2. B. Ketṣ 36b, and Rashi on the Mishnah.

3. B. Ketṣ 11a f.; P. Ketṣ 1:3.

"lost her virginity by accident"—literally "was injured by a piece of wood," which accidentally pierced her hymen.

"a male of lesser age"—who is regarded as physically unable to affect a woman's virginity.

4. B. Ketṣ 36a; Yeḇ 113a, 89a.

"barren"—see above, ii, 6; and below, xxiv, 1, 2.

"even though marriage with her is valid"—see below, Sec. 6.

"the conditions"—see below, xxii, 2.

"one hundred zuz"—since, as of the moment of her recovery, she is a nonvirgin.

5. B. Yeḇ 113a.

"one hundred minas"—i.e., 100 times 100 zuz, or 10,000 zuz, far in excess of the statutory amount, to indicate any amount, however excessive.

"he has voluntarily agreed to have his property suffer a loss"—although these women are not entitled to a kĕṭubbah, yet having voluntarily assumed an obligation, he must abide by it, however great the loss may be to his property.

6. B. Yeḇ 112b f.

"their wives have no claim upon them"—because the husbands are not fit to act as legal persons.

"cannot endure"—in the case of a deaf-mute, the marriage may endure in spite of the husband's handicap, since his mind is sound and he can be reasoned with, even if only with some difficulty; therefore the Sages have

given the courts the authority to make him marry. In the case of an imbecile, however, no tolerable marriage is possible, for "no man can dwell in the same cage with a serpent" (B. Yeḇ 112b). The Sages, therefore, saw no point in having the courts marry him off.

"prevent her from being used wantonly"—if she is not married off, there will be no one to protect her.

7. B. Yeḇ 96a; Keṯ 90a.

"she has no kĕṯubbah"—because he is still a minor, and a minor's act has no legal validity.

"the statutory kĕṯubbah"—see above, x, 7.

"proselyte"—see above, Sec. 1.

"it is on this understanding that he has retained her"—since at the moment of her conversion she is a nonvirgin, and is therefore entitled to a kĕṯubbah of one mina, i.e. one hundred zuz.

8. B. Keṯ 10b, 36a, 9b. For the varying amounts of the kĕṯubbah and for the cases where no kĕṯubbah is necessary, see above, Secs. 1–4. Obviously a charge of nonvirginity cannot be preferred against a woman presumed to be a nonvirgin, even if she was in fact a virgin.

"charge of nonvirginity"—see the next Section.

"secludes himself"—thus giving cause for apprehension that he had intercourse with her, and hence is himself responsible for the loss of her virginity.

9. B. Keṯ 9b, 36b.

10. B. Keṯ 13a.

"since his claim is not based upon a certainty"—since he himself is not certain of his charge that a man has been intimate with her before him, he cannot make her swear an oath, "I swear I did not have intercourse with any man before you." He can only pronounce a general ban, "Anyone who causes me to pay out money which is not rightfully due from me, is to be under a ban." This has been allowed by the Geonim in such a case of uncertainty. For what such a ban entails see I, III, vii, 2–5.

11. B. Keṯ 12b.

"a man did rape me"—since she was thus under duress, the rape does not affect her kĕṯubbah. See below, xxiv, 22.

"raped before I had espoused you"—in this case the fact that she was under duress when raped is irrelevant, because when he had espoused her, it was in the belief that she was a virgin. She is therefore guilty of deception.

"general ban"—see the preceding Section, and note thereto.

12. B. Keṯ 10a f, 36a.

"before witnesses"—not to be taken literally. All commentators interpret this to mean that the witnesses need only see the couple go into seclusion together, and need not witness the sexual act itself, which is not only unseemly but also forbidden. Cf. above, iii, 5; and below, xiv, 16.

"turned aside"—without tearing the hymen.

13. "an error in their copies of it"—the text (B. Keṯ 36b) used by the Geonim read: "If he pleads that he found an open door, it is really so (i.e., that a girl who has come of age may be charged with having 'an open door'). Here, however, we deal with a case where he pleads failure to bleed

(and this is not a valid claim)." Maimonides' text, like our printed text, had the reverse, i.e., that the plea of "an open door" is invalid, while the plea of failure to bleed is valid (see Tosafot, *ad loc.*)

14. B. Ket 10a.

"waste it"—by trumped up and false charges

15. B. Yeb 11b.

"has secluded herself with him"—and he therefore had the opportunity to discover her lack of virginity. If he delays, he may not plead nonvirginity, because his previous silence is taken as an indication that he had in fact found her to be a virgin, and the charges represent a change of mind inspired by ulterior motives.

16. This rule of the Geonim is found in Alfasi on B. Ket chap. 1. The reason for the ruling is that since the statutory kĕtubbah is a Rabbinic institution, the Sages are entitled to say when it is and when it is not applicable. The supplementary amount, however, is the husband's voluntary gift, and her right to it cannot be abolished without clear proof, merely on the strength of his unsupported charges.

"make her swear an oath"—see VI, 1, xi, 8 (YJS, *15*, 47).

17. "as we have explained"—above, x, 10.

Chapter XII

1. B. Ket 47b.

2. B. Ket 47b, 46b, 52b.

"conditions laid down by the court"—which remain obligatory upon him even if not expressly stipulated in the kĕtubbah. See below, Sec. 5.

"in addition to their share"—i.e., the amount of the kĕtubbah is deducted to their credit before the estate is divided among the several heirs.

3. B. Ket 47b, 65b, 46b, 83b.

4. B. Ket 70b, 58b, 83a f.

"I want neither maintenance nor work"—Rashi (to B. Ket 83a) quotes the wife as saying variously, "I have no need of this [maintenance]," "I was reared in luxury and am incapable of working," "I will find my own maintenance," "My professional skill assures me a greater income than the cost of my maintenance." Her declaration thus excludes only work for her husband's benefit, not for her own.

"condition contained in the kĕtubbah"—even though the obligation to provide for her maintenance is already decreed in the Torah (*her food*).

5. B. Ket 51a.

6. B. Ket 56a.

"the stipulation stands valid"—even in matters involving the two Scriptural obligations, *her food* and *her raiment*. The authority is B. Ḳid 19b: "He who makes a stipulation contrary to what is decreed in the Torah, his stipulation is null and void . . . R. Judah said, In matters involving (only) money, his stipulation stands valid." Rashi, *ad loc.*, explains that where all that is due is money, the creditor may waive his right to it (see the next Section). In

the case of *her conjugal rights,* what is involved is not money or property, but marital happiness and the right to progeny.

7. B. Ket. 56a, 83a.

8. B. Ket. 54b.

9. B. Ket. 84a, 56b, 83a.

"even though inheritance is a money matter"—and in money matters a condition is valid even if contrary to the Torah. See above, vi, 9.

"a statute of judgment"—implying that the rule is scripturally fixed, and may not be modified by stipulation.

10. B. Ket. 64b f.; Shab 118b f.

"two meals daily"—the customary schedule in the Near East, consisting of a morning meal and an evening meal, with little, if anything, eaten at midday.

"if it is the custom . . . for women to drink wine"—B. Ket. 65a puts it pithily: "One cup is commendable for a woman; two are a disgrace; three, she loudly demands intercourse; four, she is reckless enough to commit sodomy with an ass."

"mĕ'ah"—one sixth of a denar.

"a pĕruṭah"—the word seems to be superfluous, and is omitted in the Yemenite MSS.

11. B. Ket. 64b, 77a; Ḳid 22a, and Meiri *ad loc.*

"he should be compelled to divorce her"—while some commentators are surprised at this harsh ruling, most consider it the best way out for one who is unable to discharge such a basic obligation. See KM *ad loc.* Some authorities think that a man is obligated to seek work as a hired laborer if he cannot maintain his wife in any other way.

12. B. Ket. 64b, 65b.

"she is to eat and drink by herself . . . he may do so"—and it does not constitute a breach of his obligation. As to why the husband should want such an arrangement, some authorities interpret it as a case where the husband's work requires him to be away. See MM.

"provided he eats with her on every Sabbath eve"—according to one opinion in the Talmud (B. Ket. 65b), "eats" is a euphemism for sexual intercourse, Friday night (Sabbath eve) being the preferred time for it. See below, xiv, 1.

13. B. Ket. 65b, 57a.

"heave offering"—the portion due to the priests out of the produce of the land. It must be kept from ritual defilement, and the person eating it must be in a state of ritual purity.

"it is too much trouble for her"—since she is bound to find herself periodically in a state of uncleanness, when she menstruates, has a flux, or is delivered of a child.

"one half . . . the other half"—the profane food to be eaten by her when she is unclean.

"profane food"—ordinary food which need not be kept in a state of ritual purity, and may be eaten by a person in a state of uncleanness.

14. B. Ket. 65b, 49b.

"so is he liable for the maintenance of his minor sons and daughters"—Maimonides evidently regards this duty as implied in the Scriptural duty of providing maintenance for the wife, the minor children being considered inseparable from her.

"the enactment of the Sages"—the enactment of the Sanhedrin at Usha that a father must maintain his children beyond the age of six until they come of age (B. Ket. 65b).

15. B. Ket. 49b.

"should be forcibly collected from him, under the heading of alms"—he cannot be compelled legally to maintain his children after the age of six, but he can be compelled to give to charity if he can afford it. See VII, 11, vii, 10.

16. B. Ket. 107a, 105a.

"public announcement"—of the sale; see XIII, 111, xxii, 6 (YJS, 2, 160).

"nor swear an oath"—that she did not retain anything else belonging to her husband, with which she might maintain herself.

"her husband returns and challenges her"—by asserting that he had left with her sufficient money for her maintenance.

"an additional oath"—i.e., since she has to swear an oath on these two occasions, she is made to include in that oath the matter of her maintenance during her husband's absence, even though that matter alone could not have forced her to submit to an oath.

17. B. Ket. 48a.

"they may not be provided for out of the sale of his property"—since after they had passed the age of six years, their maintenance is regarded as obligatory upon him only as a matter of charity (above, Sec. 15), and charity may not be collected forcibly in the owner's absence and without his knowledge.

"maintenance . . . needs"—the former refers to food, the latter to clothing.

18. B. BB 23a.

"perchance she has already collected"—see below, xviii, 1.

"as shall be explained"—below, xvii, 19.

"is based on the Torah . . . is based on an enactment of the Sages"—see above, Sec. 2.

"one must always plead in behalf of an heir"—and in case of any dispute, the court itself must see to it that his rights are given precedence over those of the challenger (B. BB 23a). Hence in this case the widow's claim to maintenance is to be recognized only if she produces decisive proof, and not otherwise.

19. B. Ket. 107b.

20. B. Ket. 107a.

"she is not entitled"—assuming that she did not object at the time.

"she could have demanded"—and the husband could not have enforced his command by saying, "I surrender my right to your earnings, in lieu of release from my duty to maintain you," as explained above, Sec. 4.

21–22. B. Ket. 105a.

21. "informal oath"—literally "oath of inducement (to tell the truth)"; an oath not required by the Torah, but instituted by the Sages as a means of

persuading the disputants to tell the truth. See XIII, iv, i, 3 (YJS, *2*, 191) and VI, i, xi, 13 (YJS, *15*, 48).

22. "she is not entitled to anything"—since her failure to claim maintenance before the court or to sell her husband's property can have no other explanation than her voluntary decision to release her husband from the duty to maintain her during his absence.

23. B. Ket. 70b, 59b.

"If the duration . . . is then completed"—the vow having been made effective for thirty days only.

"he is released from his vow"—by applying to a Sage for release from his vow. See VI, i, vi, 5 (YJS, *15*, 25–6).

"before its expiration"—the vow having been made for more than thirty days.

24. B. Ket. 71a. The idea behind the rule is that when the husband subjects the wife to vows which make married life unbearable or difficult, the marriage must be dissolved. If it is she who makes the vows, and the husband does not, even though he has the right to, annul them or object to them, the marriage need not be dissolved, seeing that he is obviously willing to endure the discomfort caused by his wife's vows.

Chapter XIII

1–2. B. Ket. 64b, 65b.

1. "new garments"—are warm and therefore fit for winter. As wear and tear reduces their thickness, they become less warm and are therefore fit for summer wear. When they deteriorate further, they still have some use, namely as dress during her menstrual period, so as to keep her better garments neat and clean.

"from one festival to the other"—that is, three pairs of shoes per annum. It was estimated that where the terrain is rough, a woman would wear out three pairs of shoes in a year. They were given to her on the festivals not because that was when she needed them most, but because new footwear added to her enjoyment of the festival.

2. "worth not less"—this applies to a husband in modest circumstances. For people of means see below, Sec. 5.

3. B. Ket. 64b; P. Ket. 12:3.

"A spread couch"—i.e., the bedstead supplied with its necessary appurtenances.

4. B. Ket. 48a, 107a.

5. B. Ket. 64b, 77a; see also above, xii, 11.

"he should be compelled to divorce her"—some authorities disagree with this decision, and advise that the couple should stay together until such time as "heaven might confer its mercy upon them" and improve their circumstances.

6. B. Ket. 68a; P. Ket. 12:1.

"provide also with clothing"—see below, xix, 11.

"the court may sell"—see above, xii, 16.

7. B. Ket 48a.

"has become an imbecile or a deaf-mute"—the assumption being that had the husband been of sound mind or able to express his wishes, he would have desired his wife to look attractive. In the case of the absent husband, on the other hand, the assumption is that since he failed to make any provision for her toilet expenses, he did not care how unkempt she might look without cosmetic care.

"The rule"—see above, xii, 21–22.

8. B. Ket 71b.

"effect a release from his vow"—see above, note to xii, 23.

9. P. Ket 7:4. In the cities personal neatness is paid greater attention to than in the villages.

10. B. Ket 72a.

"sifter . . . sieve"—the former of fine mesh for flour, the latter of coarse mesh for grain.

11. B. Ket 71b, 71a; Yeb 77a.

12. B. Ket 71b.

"the husband is given one month"—to effect a release from his vow.

"two months"—one day past the first month counts as a full second month. Cf. above, xii, 23.

"pilgrimage festival"—i.e., Passover, Pentecost, or Tabernacles. It was the custom for a married daughter to visit her family during these festivals.

13. B. Ket 71b f.

"effect a release from his vow"—within thirty days. See above, xii, 23.

"or divorce her"—after thirty days.

14. B. Ket 71b; Alfasi, Responsa, 15.

15. Ab 1: 7; B. Ket 71b. See also I, II, vi, 1.

16. B. Ket 110a.

17. Tos Ket 12:1; B. Ket 110b.

"and is himself a resident of that same land"—following the reading of the Yemenite MSS, and of ŠEE 75:1. The printed text has "and she is a resident," which is untenable.

"city"—the text has *mĕḏinah*, usually translated "district" or "province." From the context, however, the word must refer to cities.

18–19. B. Ket 110b; Tos Ket 12:1.

18. "a fine location"—meaning the surroundings and the neighborhood rather than the dwelling itself. Had "location" referred to the dwelling, moving would have been forbidden within the same city or village as well.

"because . . . she has to go to the trouble"—any change in a woman's style of life, even for the better, has its disadvantages.

19. "may be compelled to move"—literally "to ascend" or "to go up," based on the Biblical usage (Num. 13:17, 21, 30, 31) and inspired by the belief that the Land of Israel is literally situated on higher ground than the rest of the world.

20. B. Ket 110b.

"in relation to Jerusalem"—Jerusalem was considered to have a higher degree of sanctity than the rest of the Land of Israel.

"any spouse"—whether husband or wife.

Chapter XIV

1–2. B. Ketṯ 61b f

1. "and his occupation"—each occupation takes him away from home for a different length of time.

2. "exchanging"—even if the exchange would mean economic improvement. In the eyes of the woman the disadvantage incurred by her outweighs the economic advantage.

3. B. Yeḇ 65a f.; Nid 17a.

"may marry several women"—since R. Gershom's edict, this applies only to the Jewish communities in the Orient.

"to reside in the same courtyard"—because this would be likely to cause rivalry and jealousy.

4. B. Yeḇ 44a.

"It depends on their number"—see above, Sec. 1.

"even if he has a great deal of money"—and thus can afford to provide them with food and raiment in abundance.

5. B. Ketṯ 71b, 72a.

"to make violent motions"—literally "to turn herself over" (*miṯhappeḳeṯ*); so the Yemenite MSS and the *editio princeps* of 1480. The printed text has "to take measures" (literally "to work").

"fools . . . foolishness"—B. Ketṯ 72a gives an illustration: "to fill ten jars with water [which in the East is precious] and empty them onto a rubbish heap . . . [which] would [make her] appear an imbecile."

6. B. Ketṯ 61b; Sheḇ 29a; Ketṯ 70a; Neḏ 15b.

"and despair"—since she would assume that he will abide by his vow, no matter how infrequent her schedule may be, as in the case of a sailor's wife.

"he is obligated to her"—by the Torah (Exod. 21:10), hence his vow violates a Scriptural commandment and is therefore invalid (see VI, 1, v, 14–15 [YJS, *15*, 22]).

7. B. Ketṯ 63a.

"transgresses"—see above, xii, 2.

"the least frequent schedule"—see above, Sec. 1.

8–13. B. Ketṯ 63b f.

8. "he must be compelled to divorce her"—this ruling has been contested by many authorities on the ground that it offers an easy way out for a woman who may actually have cast her eyes upon another man. They therefore suggest that the reason given by her should be investigated. If it is shown that she has reasonable justification for her dislike of her husband, she is entitled to be set free under Maimonides' ruling (MM *ad loc.*).

"she is not like a captive woman"—the Yemenite MSS read "she is not a captive woman."

"for which he had become surety"—such property is termed "iron sheep property." See below, xvi, 1.

"mĕloḡ property"—see below, ibid.

9. "he has done thus-and-so to me"—it is thus evident that she is merely seeking satisfaction and not divorce. The procedure is therefore intended to put moral pressure upon her to make her change her conduct.

10. "a consultation should be held with her"—directly, and not through an intermediary.

"any kĕṯubbah at all"—neither the statutory kĕṯubbah nor the supplementary amount.

"Nor should she be given a geṯ until twelve months have passed"—to give her another opportunity to reconsider.

11. "even if she," etc.—so that her rebellion has no practical effect. The element of torment is present, however, in her husband's knowledge that it will eventually have a practical effect.

12. "time . . . for wedlock"—see above, x, 17.

"as a woman who has rebelled"—and therefore forfeits her kĕṯubbah, as prescribed above, Sec. 10. The new element in this rule is that her conjugal duties had in fact not yet begun.

"in the case of a yĕḇamah"—this rule accords with Maimonides' view (below, III, i, 2) that levirate marriage takes precedence over ḥălişah. Other authorities hold the contrary view, and therefore do not regard the widow's refusal to marry her levir as "rebellion."

13. "The latter kind of rebellious wife"—i.e., the kind of woman mentioned in Secs. 9–12, whose disobedience is based on malice (and not on physical loathing, as in Sec. 8).

"the property brought by her to him"—for which he became surety. See below, xvi, 1. Ordinarily she is entitled to this property even if the husband has seized it.

14. "The Geonim have said"—these opinions are quoted in Alfasi, Keṯ chap. 5.

15. B. Keṯ 63a; Sheḇ 21a.

"thirty-six barleycorns of silver"—see above, x, 8, where a zuz is stated to consist of 96 barleycorns, 84 of copper and 12 of silver. Hence 36 barleycorns of silver would be worth 3 zuz.

"so long as she is willing to abide with him"—if she is not, he must divorce her (above, Sec. 7).

"does not involve any action"—see XIV, 1, xviii, 2 (YJS, *3*, 50–51).

16. B. Neḏ 80b; Nid 17a; P. Neḏ 11:13.

17. B. Keṯ 51a.

"his wish must be honored"—since R. Gershom's edict to the effect that a woman may not be divorced without her consent, such a declaration is no longer valid, and the husband may not refuse to pay for his wife's treatment.

"It is not proper"—i.e., though legally permissible, morally it is reprehensible.

18. B. Keṯ 51a; Neḏ 91a.

"to whom her captivity has already made her forbidden"—a priest's wife who has been captured by heathens becomes thereby forbidden to him, the presumption being that she has been subjected to rape by her captors. See below, xxiv, 21. The wife of an Israelite becomes forbidden to him only if she voluntarily engages in intercourse with her captors. See V, 1, xviii, 7–9 (YJS, *16*, 115).

"if . . . he wishes to divorce her"—because he wants to be strict with his own self, as a precaution lest she should have submitted to her captors voluntarily; or because he cannot help disliking her, even though he has no doubt that she was forced to submit under threat of violence. Since the promulgation of R. Gershom's decree, this rule is no longer applicable.

19. B. Ket 52a f.

"her price"—the price she would fetch if sold in the slave market. Payment of excessive ransom is forbidden, in order not to encourage heathens to hunt for Israelite captives. Cf. VII, 11, vii, 12.

"a second time"—his legal obligation is to ransom her once only.

20. B. Ket 48a.

21. B. Ket 87a.

"a vow which obligates him to divorce her"—see above, xiii, 8 ff.

22. B. Ket 52a.

"forbidden . . . by one of the negative commandments"—see above i, 7.

"forbidden to a priest"—see above, Sec. 18, and note thereto.

23. B. Ket 46b, 48a.

24. P. Ket 4:6; B. Ket 48a, 87a.

"she should not be thrown to the dogs"—not to be understood literally, since it was considered a meritorious deed to give burial to the unclaimed corpse of a perfect stranger. A person resident in a locality and known to his neighbors would certainly not be "thrown to the dogs" upon his decease, no matter what the circumstances may be.

"without public announcement"—because there is no time for it.

"his status . . . her own status"—whichever is higher. See above, Sec. 23.

Chapter XV

1. B. Ket 61b, f.; Yeb 61b.

"is permitted to do so"—because the commandment not to withhold her food, her raiment, and her conjugal rights (Exod. 21:10) applies only when the husband does so against the wife's wishes. See above, xiv, 7.

2. B. Yeb 65b; Ab 5:21; B. Ḳid 29b; Ber 11a.

"of seventeen"—variant reading "of eighteen," which accords with Ab 5:21. Cf. MM.

3. B. Sot 4b; Yeb 63b; Yoma 29a; Ḳid 29b.

"Ben 'Azzai"—a Sage who lived at the beginning of the second century C.E., and was so devoted to his studies that he remained unmarried.

4. B. Yeb 61b, 62b; P. Yeb 6:6.

"he has not fulfilled the commandment"—since the purpose is to propagate the race. For the definition of "eunuch" and "barren" see above, ii, 6, 13.

5. B. Yeb 62b.

"he has not yet fulfilled the commandment"—since one of his children has left no progeny, the two grandchildren by his other child being regarded as only one grandchild, which is insufficient.

6. B. Yeb 62b; Bek 47a.

"has no family relationship"—his children are accounted not as his, but as his master's, property.

7. B. Yeḇ 62b; Keṯ 77a f.; Yeḇ 64b; Tos Yeḇ 8.

8. B. Yeḇ 64a.

"with the force of an arrow"—failure to do so was regarded as a mark of male sterility.

"She is entitled . . . to the supplementary amount"—for the reason for the distinction in this case between the statutory kĕṯubbah and the supplementary amount, see below, xxiv, 3.

"as will be explained"—*ibid.*

9–10. B. Yeḇ 65a.

9. "general ban"—see above, x, 10.

"as we have already said"—in the preceding Section.

10. "does not apply to her"—and therefore failure to bear children should not really constitute a valid claim.

11. B. Yeḇ 64a.

12. B. Yeḇ 64a, 65b.

"He must therefore divorce her"—immediately, without waiting ten years.

13. B. Yeḇ 65b.

"no woman will," etc.—unless it is true.

"an informal oath"—see above, note to xii, 21.

14. B. Yeḇ 64a.

"without payment of the kĕṯubbah"—provided C was not aware of her record of barrenness. If he was aware of it, she is entitled to her kĕṯubbah. See MM *ad loc.*

15. B. Neḏ 90b.

"or ejects"—variant reading "since he ejects" (making it all one charge).

"your demand"—for a divorce; the assumption is that the husband denies the charge; otherwise he is obligated to divorce her.

"a rebellious wife"—see above, xiv, 8.

16. B. Yeḇ 62b, 61b, 63a; BM 71a.

"nor should a woman live without a husband"—this is an admonition, not a rule, since unlike a man, a woman is not obligated to marry and may, if she so wishes, remain unmarried and unfruitful all her life. See V, 1, xxi, 26 (YJS, *16*, 139).

17. B. Soṭ 3a; Pes 72b; Ḥaḡ 5b; Er 100b. See also below, v, iv, 18.

"warn his wife against infidelity"—see Num. 5:14; literally "be jealous of his wife."

"spirit of purity"—that is, his jealousy should be inspired by love of chastity and abhorrence of immorality, and not by pure selfishness, and it should be expressed in kindly admonition and not in hatred and anger.

"beyond reason"—see below, v, iv, 19.

18. B. Yoma 47a; P. Meḡ 1:10; B. Neḏ 20b; Er 100b; Ḥul 47b; ARN chap. 2; DEZ chap. 3.

"anything unseemly"—see below, xxiv, 15.

19. B. Yeḇ 62b; Giṭ 6b; BM 59a.

"honor his wife"—from the context it would seem that this refers particularly to clothing and ornaments.

"nor to anger"—B. BM 59a reads: "One should always be heedful of wronging his wife, for since her tears are frequent she is quickly hurt."

Rashi, *ad loc.*, explains: " 'she is quickly hurt,' meaning that punishment for hurting her is also quick in coming."

20. B. Ḳid 31a; Meg̃ 12b; Esther 1:22; TDE, 11.

Chapter XVI

1. Yeḇ 7:1; P. Yeḇ 7:1.

2. B. Keṯ 80b, 53b.

"under her authority"—and the husband has no right to it except that of usufruct.

"The term kĕṯubbah covers only," etc.—that is, all property not mentioned in the kĕṯubbah is to be regarded as the wife's own, held by the husband on loan from her and subject to the same regulations as any other loan.

"supplementary amount"—see above, x, 7.

3. B. Keṯ 54b, 81a; Giṯ 48b.

"made it known"—above, x, 7.

4. B. Keṯ 54a, 77a.

"and subtract its value"—he had provided the clothing for her on the assumption that she would use it while she was his wife, not that she would take it and leave him, even if it was after his death.

"without an oath"—since he is living, and not dead, and can claim sale or waiver of the kĕṯubbah, if he can prove it.

"it is he who wishes to divorce her"—if he divorces her against his will, the court must assess the clothing she is wearing. For the rule governing those who are compelled to divorce their wives, see above, xv, 7.

5. B. Keṯ 51a, 82b; Beḳ 52a.

"appreciation"—i.e., for purposes of the kĕṯubbah, the value of the property is set as it was at the moment of the husband's death, and any subsequent rise in value is disregarded.

"lenient"—in the case of ordinary debts, the creditor may collect out of the increased value of the property, since he is considered to have done the debtor a favor by making the loan; in the case of marriage, the woman is considered as the recipient of the greater favor, hence her rights are less than those of a creditor.

6. B. Keṯ 110b.

"in coins of lesser value"—depending on size and gold or silver content; provided of course it is not less than the prescribed minimum amount.

"as shall be explained"—see XIII, III, iv, 11 (YJS, 2, 91–92).

7. B. Pes 31a, BM 67a, and Rashi *ad loc.*

"The Geonim . . . have ordained"—see OhG, Keṯ, Responsa, p. 210 ff.; Alfasi Keṯ chap. 6; Tosafoṯ to B. Keṯ 51a, *s.v. mimmĕḳarḳa'e* and 67a, *s.v. gĕmalim;* R. Asher on Ḳid 3:14.

"even out of movables"—the change from an agricultural economy to a commercial economy, in which movables were as important as land, and the majority of the population no longer owned any land, prompted this enactment.

"conditions stipulated in the kĕṯubbah"—see above, xii, 2.

"kĕṯubbah of male children"—see below, xix, 1–2.

"not . . . uniform in all academies"—see Meiri on B. Keṯ 50b, p. 186; R. Asher on Keṯ 4:24.

8. "out of either land or movables"—which enables the widow to collect out of either variety of property by virtue of an explicit stipulation incorporated in the kĕṯubbah, rather than by virtue of a Rabbinic enactment. This is an advantage to her, as explained in the following Section.

"a stipulation involving money"—that is, effective even if contrary to a Biblical ordinance. See above, vi, 9.

9. "she may collect in accordance with it"—because knowing of this enactment, he has subjected all of his property, both land and movables, to her claims.

"as do the stipulations of the kĕṯubbah instituted by the Great Sanhedrin" —where the rule is that even if not stipulated in the kĕṯubbah, they are in force just as if they were written in it; see above, xii, 5, and B. Keṯ 51a. An enactment of the Geonim is of lesser authority and cannot empower the court to collect from the heirs, if that same enactment has not been explicitly referred to in the kĕṯubbah.

10. B. Giṭ 48b; Keṯ 82a, 82b; Sheḇu 45a.

"for all creditors"—see XIII, III, xiv, 1 (YJS, 2, 127–28).

11. B. Giṭ 35a.

"outside the court"—where the oath was less severe and was sworn not by the name of God but by the formula "May he be accursed who," etc.

"she might not be duly scrupulous about it"—because she might be tempted to rationalize that her claim, even if legally unjustified, is recompense for her services to the heirs.

"vow . . . anything"—for example, "If I have already been paid anything, I am to be forbidden to eat a certain kind of food." Violation of such a vow is not as severe a transgression as swearing a false oath.

12. B. Giṭ 35b; Sheḇu 48a.

"her heirs"—her children by another marriage, who are not competent to take the oath in her place. See XIII, III, xvii, 3 (YJS, 2, 141).

"release her from her vow"—the second husband cannot, however, release her from a vow made prior to her marriage to him.

13. B. Keṯ 35a; Yeḇ 66b.

"without an oath"—the purpose of the oath is to make sure that she had not already received money in payment of her kĕṯubbah. When land is security for the kĕṯubbah, such assurance is obviously unnecessary.

14–16. B. Keṯ 87b.

14. "even if there are witnesses"—nevertheless it cannot be argued that since he had paid her part of it in the presence of witnesses, had he paid her the balance, as he claims he did, he would have done it likewise in the presence of witnesses. See XIII, III, xiv, 1 (YJS, 2, 127–28).

15. "an oath"—this is a Rabbinic enactment, to satisfy the husband, since he claims that she has already been paid in full.

16. "she may take the oath and then collect"—because otherwise debtors would have an easy way to escape repayment of their debts.

17. B. Ket 87b; Sheḇu 40b; and XIII, IV, i, 3 (YJS, 2, 190–91).

"agreement of trust"—to the effect that while the kĕṯubbah is for a thousand zuz, he will be liable for only five hundred.

18. B. Sheḇu 41a; Ket 86b.

"First take an oath, and then you may collect"—see XIII, III, xiv, 2 (YJS, 2, 128).

"Rise and pay her"—unlike the case in Sec. 15, where an oath is required in order to appease the husband: there the husband has one witness to support him, here we have merely his own declaration.

19. B. Ket 86b f.

"is to be trusted in anything"—even in a case like the one mentioned above, in Sec. 14.

"his heirs"—the stipulation is binding upon the husband only, not upon his heirs.

20. "mortgaged property"—that is, property sold by the husband during his lifetime, which is surety for his wife's kĕṯubbah, and out of which the purchaser may have to pay the wife's claim, as when there is no unencumbered property to collect from; cf. above, Sec. 10. RABD disagrees with this ruling, and argues that since the purchaser knew of the mortgage on the property, he knowingly accepted responsibility for the wife's claim.

21. B. Ket 104a.

"whether she resides in her husband's house or in her father's house"—but see below, Sec. 23, where the place of her residence does make a difference.

"even if she demands it on the very day of her husband's death"—since the absence of the document may signify that she had already collected her kĕṯubbah, or had waived her right to it, and had returned the document to her husband.

22. B. Ket 89a.

"in her father's house"—see the next Section.

"She is not . . . entitled to the supplementary amount"—which is not included in the terms established by the court, but is voluntarily added by the husband.

23–24. B. Ket 104a f.

24. "ashamed"—the idea is that when the heir shows such solicitude for her welfare she is embarrassed to make any additional demand.

25. B. Ket 16b, 15b; Sheḇu 28b, 42b.

"admitted part of the claim"—while she claims two hundred zuz, he admits that one hundred zuz is due to her in any case. In such a case the Torah prescribes an oath; see XIII, IV, i, 4–5 (YJS, 2, 191–92).

26. B. Ket 116a.

"he is not, however, obligated to pay her the supplementary amount"—RABD disputes this ruling, and asks why the wife is not to be believed regarding the supplementary amount if she is believed regarding the statutory amount. Later authorities, however, agree with Maimonides, and argue that in this case the wife in effect obtains her divorce without the husband's consent, and is accordingly (cf. above, XV, 10) entitled only to the statutory kĕṯubbah.

27–30. B. Ketˇ 89a f.

27. "inasmuch as he could have said"—this is the Talmudic principle called *miggo* ("out of itself"), according to which a person's statement is assumed to be true on the ground that had he wished to lie, he might have made a statement far more advantageous to himself, without fear of contradiction.

"released himself from the obligation to pay the supplementary amount"—see above, Sec. 26.

"informal oath"—since she too makes a positive claim which he denies, he must likewise bind himself by an oath before he can be declared exempt.

28. "until she produces a documentary kĕṯubbah"—because he can say, "If I pay her now, she may produce the kĕṯubbah after my death and collect again from my heirs."

"as we have explained"—above, Sec. 21.

29. "two kĕṯubbahs and only one geṭ"—both kĕṯubbahs antedating the geṭ (for the reason see the next note), thus showing that she was divorced only once, and is therefore entitled to the payment of only one kĕṯubbah.

"from the date of the later one"—hence if the husband has, in the interval between the two dates, sold some of his property, she may not seize it from the buyer in satisfaction of her claim.

"whichever of the two she chooses"—there is an advantage in each, the one having the larger amount, and the other bearing the earlier date.

30. "two geṭs and only one kĕṯubbah"—showing that the husband did not write a new kĕṯubbah for the second marriage.

"without any stipulation"—i.e., he did not write a new kĕṯubbah for the second marriage, for the reason that its terms would have been the same, and she accordingly did not insist on the payment of her first kĕṯubbah.

"after the husband's death"—he had remarried her after divorcing her.

"if the custom of that place is not to write a kĕṯubbah"—see above, Sec. 28. In such a place, she may collect without the document, but only the statutory kĕṯubbah.

31. B. Yeḇ 117a.

"Laws Concerning Divorce"—see below, II, xii, 15.

"swear an oath"—see above, Sec. 4.

"Pay me my kĕṯubbah, and permit me to remarry"—this formula leaves it unclear whether she has mentioned the kĕṯubbah first because that is her primary concern, or whether the primary concern is really remarriage, and she has used an improper formula out of ignorance of the rules. Hence if she has already seized her kĕṯubbah, the doubt involved forbids forcible recovery.

Chapter XVII

1. B. Ketˇ 93b f.

"whom he had married first"—and whose kĕṯubbah accordingly bears the earliest date.

"an oath"—see above, xvi, 4. The oath in this case is required even if there are no heirs to demand it. Each wife must swear this oath to the next wife in line, to the effect that she had not already seized anything from the estate and thus reduced the latter's share in it.

"and she too must swear an oath"—even though she is the last in line. In her case the oath is precautionary, against the following contingency: a piece of land received by one of the preceding wives in payment of her kĕṯubbah may turn out to be liable to repossession by its rightful owner. This wife would then reclaim her share out of the residual property received by the last wife, and might also claim that the latter had in fact already collected her kĕṯubbah, in anticipation of being eventually compelled to give up the property she had received. Moreover, because of this foreknowledge, she might neglect it and let it deteriorate in value. Consequently she too must swear an oath that she had not already collected her kĕṯubbah.

2. B. BB 157b.

3. "the rule of priority does not apply to movables"—that is, if A sells some movables to B, A's creditors may not seize them from B in payment of A's debts to them; otherwise no purchaser of movables could be certain that they are not already mortgaged. Real estate is not subject to such a risk, since ownership of it and mortgage on it are matters of common knowledge.

4. B. Keṯ 86a.

"the creditor takes the cash"—since the loan was in cash.

"the wife has lost nothing"—that is, she had invested nothing that would entitle her to repayment; payment of her kĕṯubbah is thus for her pure gain.

"the woman's desire to be married"—and therefore the risk of such a disadvantageous possibility would not in any case dissuade her from marriage. The creditor, on the other hand, if subjected to such a risk in collecting his loans, may decide to bar all future borrowers from his door.

6. "the Geonim have enacted"—see above, xvi, 7.

7. "iron sheep property"—see above, xvi, 1.

8. B. Keṯ 93a.

"all the kĕṯubbahs"—the assumption is that the dates of all the kĕṯubbahs are the same (hence the absence of priority), but the amounts recorded in them are not the same; see further on, in this Section.

"one hundred zuz or less"—that is, if the estate is less than four hundred zuz, it is likewise divided equally, so that each wife receives less than one hundred zuz.

9. B. BB 174b.

"religious duty"—that is, his intention was not so much to become liable for payment of the kĕṯubbah as to induce the couple to marry.

"has suffered no loss"—see above, Sec. 4.

"*ḳabbĕlan* . . . surety"—the difference between the two is as follows: A surety is liable for payment only if the insured party is unable or unwilling to pay. A ḳabbĕlan is liable for payment even if the insured party is not in default, because by using the formula "I will pay" he has made himself as liable as the debtor, since he has in effect authorized the debtor to act as his agent. Hence, whether the debtor has property or not, payment may be exacted directly from the ḳabbĕlan.

10. B. Ar 23b.

"consecrates his property"—such consecrated property was sold and the proceeds were used for the maintenance of the Sanctuary. Animals so dedicated were offered as sacrifices on the Temple altar.

"conspire to defraud"—without the vow, she might conspire to be divorced in order to collect from the redeemer, and then remarry her husband. The vow to derive no benefit from her husband prevents remarriage and makes such collusion useless.

11.–12. B. Ket 95a.

13. B. Ket 97a f., 100a; BM 32a.

"A widow . . . A divorcée"—the difference between the two is that in the case of a widow the assumption is that the husband trusted her and wished to spare her feelings; not so in the case of a divorcée. Hence the latter is subject to a stricter rule.

"Laws Concerning Loans"—see XIII, III, xii, 4 (YJS, 2, 122–23).

14–15. B. Ket 98a.

14. "the widow's oath"—see above, xvi, 4.

15. "her sale is null and void"—since she had no authority to sell more than one hundred denar's worth of land.

16. B. Ket 99a.

17. B. Ket 53a.

"before swearing the required oath"—see above, xvi, 4.

18. B. Ket 97b.

19. B. Ket 83a.

"the other conditions stipulated in it"—see above, xii, 2.

"male child"—see below, xix, 2, for further details.

"firm resolution"—and there is no loophole for such claims as "I did it merely to afford satisfaction to my husband"; see above, Sec. 11.

"ambiguous"—literally "expressing surprise"; for example, if one says "yes" in a tone of amazement, meaning really "no." See B. BḲ 93a.

Chapter XVIII

1. B. Ket 52b, 54b, 97b.

"until she collects her kĕṯubbah"—the heirs cannot compel her to collect it if she does not wish to do so.

"pledged . . . mortgaged"—in the case of a pledge, the property out of which the kĕṯubbah is to be collected is surrendered to the creditor as security. In the case of a mortgage, the property is designated as collateral for the debt, but remains meanwhile in the possession of the owner.

"she forfeits her maintenance"—because she then ceases to be a widow.

2. B. Ket 103a.

"or she may continue to reside in the living quarters"—the Yemenite MSS omit the conjunction "or"; the early editions omit the whole sentence.

"no attention need be paid to her"—because her right to that particular building ceases when it collapses. She must, however, be provided with another home; see the next Section.

3. P. Ket 4:13, 12:3; B. Ket 48a.

"she must be provided with a dwelling"—the heirs may rent one for her, but may not rebuild her husband's home, nor allow her to rebuild it, because this would encourage her to remain in it interminably, whereas they would

usually prefer that she return to her father's house. See ṬaZ to ŠEE 94, 5.

"she may ascend"—see above, xiv, 23.

4. Tos. Keṯ 12:17; B. Keṯ 103a, 65b.

"is greater"—in Hebrew *měrubbah,* as in Tos; the Talmud has *kĕ-rubbah,* "in proportion to its size."

"ḳaḇ"—one-sixth of a sĕ'ah.

"she is a young girl"—and her reputation might be adversely affected if she lived in the same house with unmarried young men.

"The surplus"—over and above the widow's requirements, if she is frugal and uses less than she is entitled to (Rashi). RABD disputes this rule, but later authorities agree with Maimonides in this matter.

5. B. Keṯ 52b, 52a.

"unlimited treatment"—her illness being of a chronic nature.

"it is deemed the same as maintenance"—since a widow's maintenance has likewise no time limit.

"the heirs are not liable for her ransom"—a husband is liable for his wife's ransom (above, xiv, 18), since it is his duty to restore her to her position as his mate. The heirs are not bound by such a duty, and ransom, like the cost of limited medical treatment, is regarded as a noncontinuing item of expense that must be borne by her.

"even if she is a yĕḇamah"—and thus should have the status of her levir's wife, for whose ransom he is liable. Since, however, she has not yet actually become his wife, he is not liable.

6. B. Keṯ 95b; P. Keṯ 11:1.

"no attention need be paid to him"—since her earnings may not suffice for her maintenance (cf. above, xii, 4).

"her wishes must be respected"—because she may waive her right to maintenance if this suits her.

7–8. B. Keṯ 96a.

7. "that a wife is obligated to perform for her husband"—see below, xxi, 7, for a list of these services.

"except serving the cup," etc.—these services are of an intimate nature and are reserved for the husband only.

"serving the cup"—literally "diluting the cup" of wine with water before serving it, since wine served neat was regarded as too strong.

8. The husband is entitled to such find and income because he has a corresponding obligation, whereas the heirs have no such obligation.

9. "her dowry"—see above, xvi, 1.

"even though it is iron sheep property"—since the husband is completely responsible for it, one would expect it to revert to his heirs, hence it is necessary to state that even in this case her heirs inherit it.

10. B. Keṯ 69b, 96b; P. Keṯ 11:1.

"seizes movables"—a widow may not legally collect out of movables. Once she has seized such movables, however, she is permitted to keep them.

"a talent of gold"—which is presumably far more than she is entitled to.

"until her right to maintenance is terminated"—see above, Sec. 1.

11. B. Keṯ 96a; and Tosafoṯ *s.v. 'almanah šet-tofsah.*

"after his death"—when the heirs have a prior right. According to the

Talmud, inherited movables are not liable for the testator's debts and obligations. Hence the widow may not collect her kĕṯubbah out of them, even if she has seized them. An exception was made in the preceding Section in the case of the widow's maintenance, because she has no other recourse open to her, since for the purpose of her kĕṯubbah she may recover her due from the purchasers of her husband's property, whereas she may not do so for the purpose of her maintenance.

12. "Even though the Geonim have ordained," etc.—so the Yemenite MSS, commencing a new sentence and a new Section. In the printed text the reading is: "she may not collect out of them, even though the Geonim have ordained that she may collect her kĕṯubbah, including the conditions attached thereto, out of movables. Therefore the widow may receive," etc. The connection is not at all clear.

"the Geonim have ordained"—see above, xvi, 7.

"if the husband"—so the Yemenite MSS and the *editio princeps*. The later printed text reads: "And (or: But) if," opening Sec. 12 with this sentence. According to the Yemenite version, it would seem that Secs. 11–12 should be combined into one Section numbered 11/12.

"stipulated"—in her kĕṯubbah.

13. B. Keṯ 89a.

14. P. Keṯ 10:1.

"equal maintenance"—and it cannot be said that the wife who was married earlier has priority, as she does with reference to her kĕṯubbah (above, xvii, 1).

"priority does not apply to movables"—just as the debtor can always sell them and thus erase the creditor's prior lien, so can the husband sell his movables and thus free them from liability for his wife's maintenance. Hence there is no priority (see MM). The *editio princeps* reads "since priority does not apply to maintenance," which is more logical.

15. B. Yeḇ 41b, 37a, 36a; P. Keṯ 5:4.

"is subject to levirate marriage"—and must first wait three months; see below, III, i, 19.

"lies upon the estate of her husband"—since he is the cause of this waiting period.

"until she is delivered"—for until then she may marry neither the levir, lest she should give birth to a viable child, nor a stranger, lest the child should prove to be nonviable.

"viable"—i.e., one who lives for at least thirty days.

16. P. Keṯ 5:4; B. Keṯ 107b.

"without any oath whatsoever"—the purpose of such an oath is to establish that she has not seized anything from the estate in payment of her kĕṯubbah. In the case of the levir, there was no opportunity to take anything.

17. B. Yeḇ 41b.

"a levir who is a minor"—see below, III, i, 16.

"she has no claim for maintenance"—from either the minor levir, since he cannot yet marry her, nor from her late husband's estate, whose liability ceases after three months. This is admittedly unfortunate, or, as the Talmud (*ibid.*) puts it, "her penalty comes from heaven" (is an act of God, in

modern legal terminology). In mitigation of her plight, ŠEE (160, 3) suggests lending her temporarily some property from her husband's estate, which she might manage and out of the income of which she might maintain herself.

18. B. Ket 54b.

"at the time of his death"—when a verbal agreement is as valid as a written one. See XII, II, viii, 2 (YJS, 5, 136–37).

"she is entitled to all of it"—because the formula *"is to be used* for her maintenance" is taken to mean that the entire income is to be hers, even if it exceeds her maintenance, and that if it is insufficient, the deficiency is to be supplied from other property.

"he has set a limit"—that is, the formula *"shall be in lieu of* her maintenance" is taken to mean that her due shall be limited to the income from that parcel of land, whether it turns out to be insufficient or excessive, she having by her silence accepted this limitation upon her due.

19. B. Ket 87a, 105a, 88a.

"an oath"—the oath of a widow to the effect that she had not previously received anything from her husband's property. See above, xvi, 4.

"the wife whose husband had gone to a country beyond the sea"—where an oath is not required, according to some authorities. See above, xii, 16 and 18.

20. B. Ket 100b, 97b.

"without . . . announcement"—see above, xvii, 13.

"at its fair value"—see above, xvii, 14.

21. B. Ket 97a. The sale and the maintenance are executed in installments, so that if the widow collects her kĕṯubbah or remarries, thus terminating her right to maintenance, the unused proceeds would revert to the heirs.

22. B. Ket 107a.

"account"—see above, xii, 16.

"if the heirs are minors"—this opinion of Maimonides is based on the Talmudic principle that "the court acts for the orphans *in loco parentis*" (B. Giṯ 37a).

"fix the amount of them"—that is, estimate the amount of her earnings, and reduce her maintenance accordingly.

23. "it is not their custom to write a kĕṯubbah"—see above, xvi, 22.

24. B. Ket 107b.

"My husband is dead"—she is to be believed, because even if she has not told the truth, it is bound to be discovered eventually. See below, II, xii, 15.

25. B. Ket 97b.

"she is entitled to maintenance"—inasmuch as it is on account of him that she is not free to remarry.

26. B. Ket 97a.

27. B. Ket 96b.

"otherwise the orphans may swear an informal oath"—once she has remarried, the estate is completely theirs; therefore the burden of proof is upon her.

28. B. Ket 54b.

"demands"—see above, Sec. 1.

"she is entitled to no maintenance"—see above, xvii, 19.

Chapter XIX

1. B. Ket 52b.

"dowry . . . iron sheep property"—see above, xvi, 1.

"after that they share the rest of the estate"—this is the so-called "kĕtubbah of male children" (above, xvi, 7).

2. B. Ket 91a, 52b. The same rule applies if the man marries both wives at the same time; see below, Sec. 4.

3–4. B. Ket 52b.

3. "ordained in the Torah"—see Num. 27:8–11. The "kĕtubbah of male children" is merely a Scribal enactment, and can apply only if it does not go counter to an ordinance of the Torah. If it should be applied when there is no excess in the estate, it would go counter to the Torah, whenever the amounts of the several kĕtubbahs are not identical.

4. "each one of the sons inherits his mother's kĕtubbah"—see above, xvi, 7, where Maimonides states that the law of the "kĕtubbah of male children" has not been accepted universally. Meiri on B. Ket 5b (p. 186), and R. Asher on B. Ket chap. 4, Sec. 24, mention that some Geonim have abolished this enactment. R. Moses Isserles, on ŠEE III, 16, says that in the Ashkenazi communities it is no longer observed.

5. B. Ket 91a.

6. B. Ket 90b.

"it does not decrease it"—the heirs are, however, morally obligated to discharge their father's indebtedness.

7. B. Ket 90b, 91a.

"while the other died after his death"—without collecting her kĕtubbah before she died.

"widow's oath"—see above, xvi, 4.

"the stipulation"—see above, Sec. 1.

"the sons of the first wife alone"—they have priority because the failure of the second wife to swear the oath has made her kĕtubbah part of the residue of the estate.

8. "on the basis of the law of inheritance as set forth in the Torah"—i.e., each son inherits his mother's kĕtubbah directly from her, because once she had sworn the oath, the kĕtubbah became her own property.

"the heirs of the first wife have priority"—as in the case of a creditor. See above, xvii, 1.

"there is no inheritance of any kĕtubbah"—not even of the "kĕtubbah of male children," since the husband had predeceased the wives.

9. B. Ket 52b.

10. B. Kĕt 53b, 43a.

"come of age"—i.e., reach the age of twelve and a half.

"their maintenance"—see above, xii, 14–15.

"and not to the brothers"—because the father alone had title to them, in compensation for his support. The brothers, however, are obligated to support their sister out of their father's estate, and she therefore owes them personally nothing.

11. P. Ket 12:1; B. Ket 87a, 107b.

"in the same manner as the widow"—see above, xviii, 2.

"according to her own or her husband's status"—whichever is higher; see above, xviii, 3.

"as would suffice"—regardless of status.

"they are also not required to swear an oath"—since the father is not likely to have deposited property with them beforehand to defray their maintenance.

12. B. Ket 53a.

"nor can the daughters receive their maintenance"—RABD inquires why the daughters' maintenance should be affected by the waiver of the kĕṯubbah, seeing that even if the mother is divorced and her kĕṯubbah paid in full, the father remains obligated to maintain the daughters during their minority. LM's rejoinder is that waiver implies renunciation of all stipulations, including the obligation to support minor daughters, whereas payment of the kĕṯubbah discharges only the indebtedness to the mother and nothing more. MO argues in support of Maimonides' view that waiver involves renunciation of widowhood maintenance, and the assumption is that the husband has more concern for the welfare of his widowed wife than for that of his orphaned daughter (see below, Sec. 21); therefore, when the waiver involves renunciation of the widow's maintenance, it certainly involves also the renunciation of the maintenance of the minor orphaned daughters. The harshness of this rule was mitigated by the fact that the community as a whole was morally obligated to see that the orphaned girls were provided with the necessities of life.

"may have waived her right"—see above, xvii, 19.

"called for in the stipulations"—see above, xii, 1.

13. B. Ket 53b f.

"as will be explained"—see XII, ii, viii, 8 (YJS, 5, 138).

"Therefore his widow and his daughters"—they have priority, for while payment for both falls due at the same time, the assumption of the obligation for his widow and his daughters antedated the promise of the gift.

14–15. B. Ket 53b f.

14. "The daughter of a woman who had exercised the right of refusal"—i.e., she first gave birth to a child, and then exercised the right of refusal. See below, ii, xi, 1. RABD considers this rule inapplicable, since the right of refusal may be exercised only up to the age of twelve, during which time conception is not yet possible. Maimonides evidently believed that she could conceive before the age of twelve (see MM).

"the daughter of a yĕḇamah"—her mother's kĕṯubbah is the liability of the first husband, and the daughter has no claim on her half-brothers.

"of the second degree"—such marriages are forbidden by Scribal law, and the wife is therefore not entitled to a kĕṯubbah.

"espoused woman"—whose promised husband died before the wedding, and there can be no kĕṯubbah without a wedding.

"victim of rape"—i.e., the child's father raped her mother, then married her, and died; here too the child cannot be covered by her mother's kĕṯubbah, since it was conceived before the wedding.

15. "he is liable"—while normally his responsibility begins only after the

nuptials, here it starts at the espousal, because she has no other way to secure maintenance. The obligation of the brothers ceases at the espousal, yet she is too young to support herself, and recourse to begging would be repugnant to her fiancé. The only choice left is for him to support her, seeing that he is, after all, the cause of her loss of maintenance from her brothers.

17. B. BB 139b; Ket. 67a.

"is deducted first"—and is deposited with the court or the court-appointed guardian.

"can go begging"—or, in modern parlance, "are on their own." Priority is given to the daughters because they are less equipped to shift for themselves.

18. "the Geonim have enacted"—see above, xvi, 7.

"the Geonim also have so ruled"—see Alfasi to B. BB chap. 9.

19–20. B. BB 140a.

19. "but diminishes afterwards"—even if this happens prior to the settlement of the estate in court.

"the heirs retain their title"—i.e., the male heirs; and thus the obligation to maintain their sisters has become theirs already at the moment of the testator's death.

"the sons inherit it"—because *de jure* they are still the heirs, even if the estate is meager. If it increases in value they become heirs also *de facto*.

"once the sons act in anticipation and sell"—the property sold cannot be seized from the purchasers in order to maintain the daughters. There is a difference of opinion as to whether the sale in this case was made before or after their appearance in court. Rashi (to B. BB 140a) says that it applies only if they sold the property before their appearance in court, and once the court has rendered its decision, the subsequent sale is invalid. According to the Tosafot, it is valid even after their appearance in court, as long as the property was sold before it was taken over by the daughters.

20. "her daughter"—by a previous marriage, i.e., his stepdaughter; see below, xxiii, 17.

"reduce the estate"—that is, the net estate remains the same, and is not reduced by deducting the indebtedness first; cf. above, Sec. 6; the debt remains chargeable against the undiminished estate. If such a reduction would have changed the estate from ample to meager, the sons still inherit it, and the priority given to the daughters in Sec. 17, above, is still inoperative.

21. B. BB 140a; Ket. 43a.

"the widow is entitled to maintenance"—i.e., she takes precedence over the daughter, on the presumption that the testator had greater concern for the welfare of his widowed wife than for that of his orphaned daughter. See note to Sec. 12, above.

"the son's right to inherit his mother's kĕtubbah"—i.e., the "kĕtubbah of male children," which is termed a stipulation of the kĕtubbah. See above, Secs. 1–2.

"must yield"—see above, Sec. 17.

22. B. BB 139a.

"divide the estate equally right now"—because the daughters' right to maintenance has priority only over the sons' right of inheritance, and not over each other's right to maintenance.

Chapter XX

1. B. Ket 52b, 68a, 67a.

"be married therewith"—according to the Talmud, the father must enable her to make herself attractive to prospective suitors.

"livelihood"—corresponding to the dowry; see above, xvi, 1.

"as we have explained"—above, xiii, 1.

"it is proper"—but not obligatory; it is a moral duty.

2. B. Ket 67a.

"clothe her"—literally "cover her."

3–4. B. Ket 68a.

3. "If the court has no way to estimate"—if the man was a newcomer to that locality, for example.

4. "Thereupon they must divide the sum of these tenths equally"—if they are married one after another, the procedure of successive one-tenths is followed. If they are married simultaneously, they must follow the same procedure, but at the end must pool their individual tenths and divide the total equally. The purpose of this rule is to provide always a residue of the estate for the sons (cf. above, xix, 3). Today, of course, the procedure would follow a simple mathematical formula. If, for instance, there are ten sisters, their collective share would come to about 65 percent of the estate, to be divided equally among them. The residue of approximately 35 percent would go to the male heirs.

5–6. B. Ket 69a.

5. "even according to the enactment"—according to which the kĕtubbah and the stipulations attached thereto may be collected also out of movables (above, xvi, 7). This premarital grant, on the other hand, may be collected only out of real estate, because it is not part of the kĕtubbah or of the stipulations attached thereto.

"the later Sages"—so the Yemenite MSS; cf. above, xvi, 8. The printed text has "the earlier and later Sages."

"rental of this real estate"—before it has been collected, when it still has the status of real estate. Once it has been collected, it has the status of movables, and is not liable for the daughter's livelihood. See Tosafot to B. Ket 69a, *s. v. me-'amla' dĕ-beṭe.*

6. "She may therefore collect it"—as a creditor does, i.e., out of land of medium quality, and without an oath; or if the debtor is dead, from the orphans, out of land of inferior quality and after swearing an oath.

"as shall be explained"—XIII, III, xiv, 1; xix, 11 (YJS, 2, 127–28, 147).

7. B. Ket 69a; Git 50b.

"as will be explained"—XIII, III, xviii, 1 (YJS, 2, 143–44).

8. B. BB 139a.

"divide . . . equally"—as an inheritance. The enactment giving each daughter one-tenth (above, Sec. 4) applies only in case there are sons, when the daughters cannot inherit the estate. When there are no sons, the daughters are the heirs, and have no claim to any special grants.

9. B. Ket 69a.

10. B. Ket 68b.

"this is not one of the stipulations of the kĕṭubbah"—but rather a liability of the heirs. See above, Sec. 6; and cf. above, xix, 13.

11. B. Ket 49b; BB 139a.

"We have already explained"—above, xix, 21.

12–13. B. Ket 68a f.

12. "the approximate amount intended by her father"—see above, Sec. 3.

"even if the brothers do not maintain her"—and thus she has no reason not to protest. See the next Section.

"is deemed incapable of lodging a protest"—hence her failure to do so is immaterial.

13. "she forfeits it"—her failure to claim being regarded as consent to forfeiture.

"as we have explained"—above, xix, 10.

"as long as they continue to maintain her"—silence in this case is not equivalent to consent, but is rather ascribed to her natural reluctance to enter a claim against those who are treating her so generously. Cf. above, xvi, 24.

"and she is not yet married"—if she is already married, she is entitled to livelihood only if she protests.

14. B. Ket 69b.

"while gravely ill"—see above, xix, 13.

"an adult and married"—the whole purpose of the trusteeship was to keep the funds in trust for such an eventuality, whereupon she was to dispose of them as she wished.

"what he was commanded to do"—that is, buy a parcel of land with the money in her name. If she is an adult, but only espoused and not married, her husband is not entitled to receive her livelihood; if she is already married, but not yet come of age, she is incapable of transferring property to anyone.

Chapter XXI

1. B. Ket 65b, 58b; Tos Ket 5:3; B. Ket 61b; P. Ket 6:1.

"her handiwork"—i.e., the earnings from her handiwork. See above, xii, 4.

"flax injures the mouth and the lips"—"flax causes one's mouth to become sore and makes one's lips stiff" (B. Ket 61b), because flaxen thread must be drawn along the spinner's lips to moisten it before it is spun.

"that is characteristic of women"—B. Yoma 66b.

2. B. Ket 66a, 59b.

"more work than is proper for her"—more than would cover the cost of her maintenance.

"If he has"—the Yemenite MSS read "If she has."

"if she herself has"—the Yemenite MSS read "if they have."

3. B. Ket 59b, 61a f.

"If a man . . . leads to immorality"—in the Yemenite MSS this sentence is attached to the preceding Section, which seems more logical.

"pour his cup"—literally "mix his cup" of wine with water to temper it.

4. B. Ket 61a, and Rashi *ad loc.*

5. B. BḲ 82a; Ket 59b, 61b.

"her husband's mount"—taking care of his riding animal is regarded as personal service on the part of his wife; plowing and milking cattle are not in this category.

"watching"—*mĕšammereṭ* (cf. ṬEE, 80); variant translation, "sifting."

"driving the beast"—that turns the heavy millstones.

6. B. Ket 61a, 59b.

7. "any wife"—both rich and poor.

8. B. Ket 61a.

"she may perform also while she is menstruating"—see V, 1, xi, 18–19 (YJS, *16*, 79–80).

9. P. Ket 9:4.

10. Alfasi and RaN on B. Ket 63b.

"even by scourging with a rod"—RABD protests: "I have never heard of women being scourged with a rod!" For the case of the husband being scourged with a rod, see above, xv, 7.

"asked to stay with them"—and later testify before the court as to whose claim is true.

11. B. Ket 64b, 65b, 60b; Ned 80b.

"the maintenance due her"—see above, xii, 10, where a woman who is ill or gluttonous is specifically exempted.

"or eats injurious food"—this contradicts the rule in the Baraita (B. Ket 60b), "While in charge of the child, she must not eat things which are injurious for the milk." Commentators suggest that Maimonides may have had a different reading in his text of the Gemara.

12. P. Ket 5:6.

13. B. Ket 59b, 60a, 61a.

"twenty-four months"—the statutory duration of the nursing period.

"it is painful for her"—Rashi explains it in the sense that failure to discharge the milk causes her physical pain.

14. B. Ket 61a.

"obligated to nurse"—see above, Sec. 5.

"while he is affluent"—see above, Sec. 6.

"a woman can only rise"—see above, xiv, 23.

15. "no room here for an oath"—i.e., he need not swear an oath that he cannot afford it; inasmuch as it is her obligation to nurse the child, the burden of proof is upon her, if she wishes to be released from this obligation.

16. B. Ket 59b, 60a.

"A divorcée may not be compelled to nurse"—since her duty to do so, which she owes to her husband, ceases with her divorce.

"on account of the possible danger to its life"—because it might refuse to be nursed by another woman.

17. B. Ket 97b, 65b, 102b f.; Er 82b.

"A pregnant woman . . . has no claim"—during her pregnancy; but after the child is born, she is subject to the rule just mentioned.

"the months of nursing"—i.e., the twenty-four months mentioned in the preceding Section.

"the father should . . . provide maintenance"—up to the age of six; see above, xii, 14.

"After the six years"—the age of six was considered the approximate age when schooling should begin. See I, III, ii, 2.

18. B. Ket 102b; Yeb 42b.

"can afford to dispense charity"—see above, xii, 15.

"to maintain his daughter therewith"—until she comes of age. See above, xii, 15.

"cast them upon the community"—since other men might be reluctant to marry her and be saddled with the support of her child by a previous marriage. Later authorities maintain that if her own means are ample enough to dispense charity, she is obligated to maintain her child as a matter of charity.

Chapter XXII

1. B. Yeb 89b; BB 158b.

"has prior claim"—see above, xii, 3; and XIII, v, i, 8 (YJS, 2, 262).

"bridal chamber"—see above, x, 1.

2. B. Ket 48b.

"her kĕṭubbah"—that is, her livelihood, recorded in the kĕṭubbah as her dowry.

3. B. Ket 53a.

"does not become her heir"—even though in these three cases she is no longer under the authority of her father, nevertheless the husband does not become her heir, since she had not yet come under his authority.

4. B. Yeb 108b; P. Ket 1:2; Tos Yeb 2.

"forbidden to him"—for such forbidden women, whose betrothal is nevertheless effective, see above, i, 6; iv, 14, 12.

"a female minor"—whose betrothal is valid only according to Scribal law. See above, iv, 7, 8.

"a . . . deaf-mute"—see above, xi, 4; ii, 26; xi, 6.

5. B. Ḳid 45b.

"as we have explained"—above, iii, 13.

"remained silent"—usually silence signifies consent; here it is regarded as a sign of anger.

6. Alfasi to Ket chap. 5.

"a rebellious wife"—see above, xiv, 8; in this case she is obviously plotting to deprive her husband of his right to her estate.

7. B. Ket 78b, 50a; Alfasi to Ket chap. 4.

"iron sheep . . . mĕlog̃"—see above, xvi, 1. Once married, the income from her mĕlog̃ property belongs to her husband, and while she may sell the property itself, she has no right to sell the income therefrom. If she dies in her husband's lifetime, his hereditary right to her property antedates the acquired right of the purchasers, and therefore cancels it—an eventuality that was known to the purchasers at the time of the purchase. Nevertheless, if the very same purchase money is still on hand in the wife's estate, it must be returned to the purchasers.

8. B. Ket 78b.

"known to the husband"—and considered by him while making his decision to wed this particular woman. Moreover, the bride's property known to him becomes part of the marriage agreement.

9. B. Ket 79a.

"as will be explained"—XII, II, iv, 12 (YJS, 5, 130).

"since she had given it away before marriage"—and the property falls in the category of such as the husband was not aware of at the time of the marriage. See the preceding Section.

10. B. Ket 78a, and Tosafot *ad loc.;* Yeb 38b; Ket 80b; BB 158b; Ket 47b.

"until he consummates his marriage with her"—only then is he her husband in every respect.

"If she dies"—the principle involved here is this: On the one hand, the levir has a statutory claim to the widow's hand in marriage, and she is thus virtually attached to him by being subject to levirate marriage. On the other hand, she may refuse to marry him and demand ḥălişah instead (cf. below, III, i, 2), thus rendering this attachment of no effect. Hence, because of this doubtful situation, both sides, her husband's heirs and her father's heirs, have at least some justification for their claims to the iron sheep property; it is therefore divided. See XIII, v, iii, 9; v, 6 (YJS, 2, 270, 275–76).

"The husband's heirs are also obligated to take care of her burial"—since they inherit her kĕṭubbah, and thus also the duty stipulated in it to take care of her burial.

11. B. Ket 81b.

"against all of her husband's property"—since the levir is not required to write his own kĕṭubbah for her until he actually marries her (cf. below, III, ii, 2). Thus her first kĕṭubbah is the only security she has for her claim.

12–13. B. Ket 80b.

12. "produce attached to the ground"—has the same status as the land itself, and therefore belongs to her. The usufruct of land, however, belongs to her husband. Hence this arrangement.

13. "Gaonic enactment"—see above, xvi, 7.

"does not have sufficient force"—provided, of course, that the kĕṭubbah does not expressly stipulate (in accordance with xvi, 8, above) that the real estate and the movables are to be liable for the kĕṭubbah. If it does, the movables must be sold and the proceeds used for the purchase of land, as provided for in the preceding Section.

14. B. Ket 82b.

"has no kĕṭubbah"—see above, x, 11.

15. B. Giṭ 55b; P. Yeb 7:1; B. BB 50a.

"her act is invalid"—she may not sell or give away iron sheep property to others, because of her husband's right to usufruct; nor to her husband, because he can claim that she did so merely in order to please him. Cf. below, Sec. 17.

16–17. B. BB 50a.

16. "even though he is not permitted to do so"—since in case of divorce he must give them back to her.

"the sale is valid"—the difference between the sale of land and the sale

of movables is that in the case of land, which is not a perishable article, she is confident of its permanence and expects it to be there at all times; in the case of movables, which are usually perishable, she is presumed to be reconciled to their eventual disappearance through wear and tear. Hence their sale by the husband is valid.

17. "she may not claim"—her sale is valid, because in the case of mĕlog̱ property her husband has no right to object to the sale, and she therefore has no need for an alibi.

18. B. BB 49b f.

"assigned by him to her for her kĕṯubbah"—a field designated by the husband in the kĕṯubbah as collateral for the kĕṯubbah, if and when due.

"designated in the kĕṯubbah as hers"—a field brought by her as part of her dowry, and so designated in her kĕṯubbah.

"a field of his own"—where the custom is for the husband to match the dowry by assigning to the wife some of his own property. See below, xxiii, 11.

"a formal act of barter"—a symbolic act which makes the sale binding. See XII, 1, v, 5 (YJS, 5, 21).

"recourse . . . to any proof"—even if there are witnesses or documents to prove it, because these cannot invalidate her claim that she did it in order to keep peace in the family.

"as we have explained"—in the preceding Section.

19. "To the wife who declares"—the husband is responsible for the management of his wife's iron sheep property, but not for the management of her mĕlog̱ property (above, xvi, 1). Hence when the wife declares that she has changed the status of a piece of iron sheep property to that of mĕlog̱ property, she has in fact relieved the husband from any responsibility for it, and assumed the responsibility herself. Should the matter be contested in court, all that will be involved, as far as the husband is concerned, is his freedom from responsibility for that piece of property, not his claim to it or to the retention of it.

"to please my husband"—and did not in fact wish to waive her right. The principle behind the explanation is that her claim that she had done something to please her husband is valid only when she has waived her right to a tangible object, as when she made him a gift of a piece of property, but not when she has waived her right to a claim that arises from such property, as for instance, the husband's liability in the case of loss or theft of iron sheep property.

"changed it into mĕlog̱ property'"—for which the husband is not liable.

20. B. Keṯ 80b.

"sells the usufruct"—i.e., the sale allows the purchaser to cultivate the land and dispose of the produce, while the land itself remains the property of the original owner, i.e., the wife. Such a sale is invalid, even though the husband has a right to the produce, because he may use it only for household expenses and not for any other purpose.

"uses the money in trade"—the profits to be applied toward household expenses.

21. P. Keṯ 6:3; B. Keṯ 79a.

"iron sheep property"—in the case of iron sheep property the husband

is responsible for it, and may therefore use it in trade. In the case of mĕlōg property, for which he is not responsible, her rights are best protected if all of it is converted into land, which is not perishable.

22. B. Ket 65b.

"as will be explained"—see XI, IV, iv, 15 (YJS, 9, 174); and below, Sec. 28.

23. B. Ket 79b; P. Ket 8:6.

24. B. Ket 79a. While the marriage endures, the husband is entitled to usufruct of his wife's real estate. Hence if she inherits land with produce still attached to the ground, the produce comes under his right of usufruct. If the produce is detached from the ground, it constitutes the principal of her property, hence the husband has no title to it; it should be sold and converted into land, and when that acquired land produces crops the husband will be entitled to them. In the case of divorce, produce still attached to the ground is regarded as the wife's property, since the husband had obviously not yet harvested it, i.e., had not exercised his right of usufruct, prior to the moment of divorce. If the produce is detached from the ground at the time of divorce, the husband has obviously already claimed it by right of usufruct while he was still married to his divorced wife, hence the produce belongs to him.

25. B. Yeb 67a; Ket 79b.

"The husband is liable," etc.—slaves and cattle not cared for are bound to die or run away, resulting in total loss to the wife, since the husband is not responsible for loss of mĕlōg property.

26. B. Yeb 67b.

"and they have risen in value"—since she has brought these in as iron sheep property, she is entitled to the original value only. She has, however, the privilege of buying the surplus in order to keep the estate intact.

27. B. BB 51b; Ned 88a; Naz 24b; BḲ 89a.

"sells her kĕṯubbah"—as she may do. See above, xvii, 17.

"goodwill benefit"—see above, note to x, 10.

28. B. Ket 79b, and Tosafoṯ *ad loc., s.v. Pera.*

"pay double"—as prescribed in Exod. 22:6 f.

"it does not constitute usufruct"—in this case the offspring constitutes the product of the beast, while the excess paid by the thief is the product of the product, which is not included in the enactment of the Sages.

"If a third person injures his wife"—he must pay her husband for the injury and medical expenses, and must pay the woman for the damage and pain she suffered. If the husband himself injures her, he must make payment to her, and is not entitled even to usufruct thereof. See XI, IV, iv, 15–17 (YJS, 9, 174–75).

29. B. BB 51b.

"If the money was kept secret"—the point at issue is not the ownership of the money, which being mĕlōg property is unquestionably the wife's. The husband, however, is entitled to usufruct thereof (above, Sec. 21), and the wife is thus guilty of depriving him of his lawful due, and must now right the wrong done by her.

30. P. Ket 6:5; B. BB 52b.

"and therefore mine"—above, xxi, 1.

"ban"—see above, xi, 10.

"the burden of proof is upon her"—the presumption is that the gift itself is bound to be a matter of common knowledge, so that she would not resort to a lie; any stipulations limiting the scope of the gift, on the other hand, are not likely to be known to other persons.

31. "informal oath"—while the Torah does not require an oath in such a case, the Sages have prescribed it to strengthen her claim, in view of the husband's counterclaim.

32. B. BB 51b f.

"bailments"—each of the three, the woman, the minor, or the slave, is suspected of having obtained the article illegally, and he who accepts it for deposit from them might be guilty of abetting a crime.

"from a minor"—the bailee should not return it to him, since he is incapable of taking proper care of it. Therefore something useful should be bought for him, e.g., a book to study or an article that produces income.

33. B. Ketṣ 79a.

"produces new shoots"—so that when these—i.e., the income—are used up, the capital would still remain intact.

34. B. Ketṣ 79b.

"brings"—as her dowry.

"a goat for milking"—the animal itself is not her property, and she has a right only to its milk. The yield is therefore the principal. The same applies to the ewe and the date tree.

35. B. Ketṣ 80b; Alfasi on B. Yeḇ chap. 7.

"as they are"—and the husband need not pay her the depreciation. This is contrary to the Talmudic regulation quoted above, xvi, 1. Hence MM states: "In our lands the custom is not so, but rather as the rule stated in the Talmud."

"in the house of another wife . . . to another city"—while he is in the same city, the wife is obligated to wait on him and have her servants wait on him; if they do so in the other wife's house, it is no loss to her; indeed she is then free of the duty to render him her personal services. Once he goes to another city, however, she is no longer obligated to provide attendance for him, and he cannot demand that her servants accompany him on his journey without her consent.

Chapter XXIII

1. B. Ketṣ 83a; BB 43a.

"to which he is normally entitled"—see above, chaps. xii and xiii.

2. B. Ketṣ 83, and Rashi *ad loc.*

"he is entitled to usufruct . . . entitled to no usufruct"—in the first case, where no symbolic act of barter has ratified the stipulation, the assumption is that he has yielded only the minimum, i.e., her right to sell, but not his right of usufruct; in the second case, where the stipulation was ratified by a symbolic act of barter, he has yielded his usufructuary rights as well, since no symbolic ratification is necessary to yield the right of sale alone.

3. B. Ket̲ 83a; Tos Ket̲ 9:3.

"usufruct of that particular piece of property only"—he has waived his right to the income from her first parcel of land; the income from the second parcel represents the product of the product of the first parcel, and thus does not come under his waiver.

4. B. *ibid.*

5. P. Ket̲ 9:1.

6. B. BB 49a.

"as we have explained"—above, xii, 9.

7. "as we have explained"—in the preceding Section.

8–10. B. Ket̲ 79b f.

8. "the yield"—to which he is entitled by his right of usufruct.

"in a dignified manner"—i.e., in his home, while sitting at his table, thus giving it importance.

"a bundle of vine shoots"—fit only for animal consumption, by his cattle.

"what he has spent is spent," etc.—and is not subject to reimbursement.

9. "monies"—due to his wife, and forming her mĕlog̲ property.

"the . . . minimum amount"—mentioned in the preceding Section.

10. "If she is guilty of rebellion against her husband"—and demands divorce. See above, xiv, 8 ff.

"take them and leave on her own"—see above, xiv, 8.

"her right of refusal"—see above, iv, 8.

"a tenant"—who receives a specified share of the produce.

11–12. B. Ket̲ 66a.

11. "dowry"—see above, xvi, 1. Making the dowry appear larger than it really is constitutes a concession to man's vanity; making it look smaller prevents jealousy.

"equivalent to the value of the dowry"—i.e., the father of the groom matches what the bride brings in as her dowry.

"adds . . . assessable articles"—which become part of the dowry, and are eventually repayable by the husband or his estate.

12. "according to the custom of the particular country"—that is, the stated amount of the dowry, or more, or less, as explained in the preceding Section.

13. B. Ket̲ 102a f.

"How much will you bring me?"—in the case of the bride, it is her dowry; in the case of the groom, it is what he writes in the kĕt̲ubbah in addition to the minimum, or what he adds to her dowry.

"perform the betrothal"—provided there is no hiatus between the negotiation and the betrothal, the latter following the former immediately.

"by verbal declaration only"—with no need for additional ratification by a symbolic act of barter.

14. *Ibid.*, and P. Ket̲ 5:1.

15. P. Ket̲ 6:2; B. Ket̲ 66b f.

16. B. Ket̲ 109a.

"rebellion"—see above, xiv, 8 and 12; in such a case divorce is mandatory.

17–18. B. Ket̲ 101b, 102b.

17. "her daughter"—by a previous marriage.

"as shall be explained"—see XII, 1, xi, 15–17 (YJS, 5, 41–42).

18. "property mortgaged thereto"—that is, property designated in the agreement as security; the stepfather could sell the property during his lifetime, but the stepdaughter is entited to seize it after his death from the purchaser, in satisfaction of her claim.

"that was not intended to be set down in writing"—otherwise the stepfather would have set it down in a formal writ of indebtedness. Hence even if the oral agreement is reduced to writing, the writ does not have the force of a formal document, and is of no effect.

"she cannot . . . seize"—she may, however, demand payment from the heirs (who are liable for the deceased's debts, both written and oral) in the manner of an oral debt.

Chapter XXIV

1. B. Ket 100b.

"a barren woman"—defined above, ii, 6.

"by whom he might have children"—literally "to be fruitful and multiply out of her."

"must be compelled"—see above, xv, 7.

"she . . . is entitled to her kĕṭubbah"—see above, xii, 2.

"The husband too is entitled"—see above, xii, 3.

2. B. Ket 100b f.; Yeb 85a.

"forbidden to him by a negative commandment" see above, i, 7.

"secondary degree of consanguinity"—see above, i, 6.

"whether knowingly or unknowingly"—a distinction is made between a barren woman and one forbidden by a negative commandment on the one hand, and a woman of secondary degree of consanguinity on the other. In the former case, the rule applies only if the husband was not aware of the woman's defect, while in the latter case it applies whether he was aware or not. The woman herself is presumed to have been aware of her defect in either case. The reason is that in the latter case, since she is forbidden to him by Scribal law only, she might deliberately induce him to transgress, inasmuch as the marriage, even though forbidden, does not impair her status. Hence the rule is strict with her. In the former case, however, the marriage impairs her status, and it is he, rather than she, who is likely to transgress. Hence she is penalized only if he was not aware of her defect.

"even after his death"—needless to say, she is not entitled to maintenance during his lifetime, since it is their duty to dissolve the marriage.

"she is not entitled to recover from her husband"—the husband is entitled to usufruct of her property in compensation for his obligation to pay her ransom if she is captured (above, xii, 4). Since in this case he does not have this obligation, he should logically repay her for his enjoyment of usufruct. She is, however, denied this right as additional penalty.

3. "the husband should not think lightly of dismissing his wife"—see above, x, 7.

"he was not aware of her defect"—and thus the purpose of the kĕṭubbah, that the husband should not think lightly of divorcing his wife, does not apply here, since the Sages were anxious in this case that the husband should not retain her.

4. B. Yeḇ 85a f.

"they reinforced this prohibition"—the laws of the Torah had great authority and practically enforced themselves. Rabbinic enactments, on the other hand, were more likely to be disregarded, and therefore had to be buttressed by greater strictness.

"to maintain her out of his property"—so the printed text (*lazun*). The Yemenite MSS and the Soncino edition of 1490 have *lizzoḳ*, "to cause loss to his property," i.e., to give her more than is necessary, because he does not mind diminishing his possessions. See above, xi, 5.

"forbidden by a positive commandment"—and these positive commandments are not explicit, but are rather inferences from other commandments (see above, i, 8) and therefore light ones.

"Both of them are therefore entitled to maintenance after his death"—while the husband is living, they are not entitled to maintenance, because if they were, it would be a temptation for them to remain with him, which is forbidden. There is no such temptation after his death.

"if she borrows"—while the husband is away and not there to give her her maintenance.

5. B. Keṭ 101a, 107b.

"is not entitled to a kĕṭubbah"—because she has left her husband on her own initiative (see above, xxiii, 10). She is entitled to the supplementary amount, however, because he has obligated himself for it of his own volition, while knowing full well that she might exercise the right of refusal later on.

6. B. Keṭ 101a; Yeḇ 87b.

"nor to the supplementary amount"—even though this represents a voluntary obligation on the part of the husband, it is based on his anticipation that she will be faithful to him. Once she breaks her faith, his obligation is abrogated.

7–9. B. Keṭ 101a.

7. "In the case of iron sheep property . . . for repayment"—these two sentences form the conclusion of this Section in the Yemenite MSS and in the early editions. In the later editions they form the beginning of Sec. 8, which seems less logical.

8. "because she had given him permission"—since she knew that she was forbidden to him, his responsibility, even though he accepted it, was at the outset invalid, and he is therefore not liable for any loss.

"he is liable for repayment"—both parties to such basically forbidden marriages are thus penalized to some extent.

9. "the husband is not liable"—because the husband may claim that he is responsible only when he sends her away, not when she leaves him of her own volition.

10. *Ibid.;* and B. Yeḇ 87b.

11–12. B. Keṭ 72a ff.

11. "with the hair of her head uncovered"—the unseemliness of this is deduced from Num. 5:18, where the priest uncovers (or loosens) the hair of the wife suspected of adultery.

"during menstruation"—when it is her duty to deny herself to her husband. See Lev. 18:19.

"swarming and creeping creatures or carrion"—which are forbidden by the Torah. See VII, III, i, 26.

"So-and-so, the priest"—it need not necessarily be a priest; it was, however, usually the priest who regularized produce by setting aside and taking the offering due to him.

12. "uncovered"—or "loose" (*paru'a*).

"rose"—*wĕraḏ;* some commentators interpret it as rose-colored wool, whose reflection lends her face a ruddy hue, thus making her more attractive.

13. B. Keṯ 72b; BḴ 82a; P. Meḡ 4:1.

"Ezra ordained"—the Talmud describes many practices as enactments of Ezra, who helped re-establish the Jewish community in the Land of Israel after the return from the Babylonian exile.

"drawers"—*sinar;* so explained by Rashi to B. BḴ 82a. Maimonides himself (PhM to Shab 10:4) explains it as a girdle. Jastrow (p. 983) translates *sinar* as petticoat or breech-cloth. Cf. "trousers" (*miḵnasayim*), below, Sec. 15.

14. B. Soṭ 25a; Tos Keṯ 7:6.

"witnesses"—who must testify to both the warning and the subsequent repetition of the transgression.

15. B. Yeḇ 24b f.; P. Keṯ 6:7.

"moist saliva"—indicating that the couch was recently used by a person lying prone.

"no warning is required"—the act itself is so suggestive that it makes her forbidden to her husband even before any warning is possible.

16. B. Keṯ 72a; Soṭ 25a; Mak 7a.

"to retain her"—unless there are witnesses to her misconduct.

"let the husband think lightly of dismissing such a one"—should he retain her nevertheless, and should her subsequent conduct testify to her resolve to mend her ways, he may, according to later authorities, give her a new kĕṯubbah; her former kĕṯubbah, having been forfeited, cannot be reinstated under any circumstances.

17. B. Ḳid 66a.

"If a man sees his wife"—his own testimony is not sufficient to condemn her, but is sufficient to require her to take an oath.

"in whom he places credence and reliance"—if he relies upon the informant, he is obligated to divorce his wife; but one witness alone is not sufficient to cause her to lose her kĕṯubbah.

"If, however, the witness is someone else"—so the Yemenite MSS, followed by KM. The printed text has "In another thing, however," which is difficult to understand.

"unless she is already subject to an oath for some other reason"—the husband cannot subject her to an oath on the testimony of only one witness, since his claim is not certain, unless he can add this matter to an already required oath touching some other matter.

18. B. Neḏ 90b f.; Yeḇ 24b.

"no attention need be paid to her statement"—after R. Gershom's reform, which forbade a husband to divorce his wife against her will, the same rule applies to him also, since he too may have cast his eyes upon another woman.

"she may have cast her eyes upon another man"—and her confession is merely a ruse in order to obtain a divorce.

19. B. Keṯ 51b, 3b; Soṭ 28a; Yeḇ 33b.

"unwittingly"—for example, if two women were sleeping in the same bed, and the husband of one of them, by error, had intercourse with the other.

"neither she be seized"—the usual translation is *neither she be taken in the act.* The Talmud, however, takes it to mean "she was not acting under duress."

"succumbed to impulse"—cf. V, 1, i, 9 (YJS, *16,* 12).

20. B. Keṯ 51b.

"captive women"—see V, 1, xviii, 7 (YJS, *16,* 115).

21. B. Keṯ 51b; Yeḇ 56b.

"the status of a harlot"—for the legal definition of a harlot see V, 1, xviii, 1–2 (YJS, *16,* 113).

"as shall be explained"—*ibid.*, xvii, 1 (YJS, *16,* 108).

22. B. Neḏ 91a; Yeḇ 88b.

23. B. Neḏ 90b f.

"cast her eyes"—see above, Sec. 18.

24. B. Soṭ 25a, 2b.

"long enough to be defiled"—see below, v, i, 2.

"water of bitterness"—see Num. 5:18.

"as will be explained"—see below, v, i, 2.

"If he dies"—the husband alone has the authority to demand the ordeal by bitter water, since Scripture (Num. 5:15) says, *Then shall the man bring his wife unto the priest.* Cf. below, v, ii, 7.

"than this"—that is, than her willful defiance of her husband's public warning not to seclude herself with that man.

"water of the wayward woman"—same as "water of bitterness."

25. B. Soṭ 2b.

"make her swear an oath"—that she was not unfaithful.

"and only then pay her her kĕṯubbah"—because his testimony alone cannot deprive her of this right. If she admits her misconduct, she loses this right.

Chapter XXV

1. B. Keṯ 72b, 73b, 101a; P. Keṯ 7:7.

"subject to vows"—see above, vii, 6.

"she does not forfeit anything"—because ordinarily a man would not resent such vows. See above, vii, 6.

2. B. Keṯ 72b, 75b; R. Asher to Keṯ chap. 7, Sec. 15.

"already described"—see above, vii, 7.

"Epilepsy . . . is . . . a concealed defect"—since one can conceal it by retiring into privacy each time an attack is imminent.

"Edom"—the usual name for Rome and the Roman Empire, and later for Christian Europe in general, in contradistinction to the land of Ishmael, where Islam is dominant.

"everyone"—i.e., every female person.

3. "A few Geonim"—quoted by R. Asher on Ket chap. 7, Sec. 15.

"would not rely too much on anyone's advice but that of his relatives"—the sentence can also be translated "would not rely on anyone's advice but that of his closest relatives."

4. B. Ket 75b.

"or that the presumption is," etc.—the defect being obvious and easily visible.

"it is therefore the groom's misfortune"—literally "his field was inundated"; in other words, it is an act of God.

5. B. Ket 76a.

6. B. Yeb 111b.

"after having intercourse"—some authorities do not regard this as a necessary prerequisite, and consider the lapse of time alone as sufficient (MM).

"no attention need be paid to him"—on the analogy of the charge of lack of virginity (above, xi, 15), which is ineffective unless brought immediately after the consummation of the marriage.

"no man would drink out of a cup"—obviously a euphemism for sexual intercourse.

7. B. Nid 12b.

"rags"—literally "witnesses." These served as evidence of presence or absence of menstrual blood.

"as will be explained"—V, 1, iv, 16 (YJS, *16*, 29).

8. B. Nid 12b, 66a.

"she does not forfeit anything"—of her kĕtubbah, since she does examine herself first, and thus is not causing any forbidden intercourse.

"she is forbidden to abide with her husband"—because she is continuously menstruating, and her husband is consequently continuously forbidden to have intercourse with her. That is why this defect is regarded as of the utmost gravity.

"and may never remarry her"—for should he be permitted to remarry her, he is likely to have reservations in his mind during the divorce proceedings. As a result, if she should marry another man and find that she is cured, the first husband might say, "Had I known that she was curable, I would not have divorced her." Such reservations would invalidate the divorce. Hence he is made aware at the outset that once he divorces her, he will never be permitted to remarry her. See below, 11, x, 12.

"She may, however, marry another man"—because she might not be subject to bleeding with another man (if his genital organ is smaller, for example).

"as will be explained"—see V, 1, iv, 21 (YJS, *16*, 30–31).

9. "it is her husband's misfortune"—see above, note to Sec. 4.

"as we have explained"—in the preceding Section.

10. B. Ketṣ 75a, 51a.

"if he wishes to dismiss her"—although it is not proper to do so. See above, xiv, 17.

11–13. B. Ketṣ 77a.

11. "canine droppings"—were used as chemicals in solutions in which clothes were soaked before laundering.

"hewing copper out of its source"—"copper . . . when heated or rubbed . . . emits a peculiar odor" (*Encyclopedia Britannica*).

"tanning hides"—all three occupations were regarded as unsanitary and likely to render the occupants repulsive.

12. "aggravate his condition"—sexual intercourse was considered highly injurious to a man suffering from boils (B. Ketṣ 77b).

13. "and pay her her kĕṯubbah"—in the Yemenite MSS and in the early editions the Book ends here. Later editions add the verse, *And see thy children's children. Peace be upon Israel* (Ps. 128:6), in order to conclude the Book on a cheerful note.

TREATISE II: LAWS CONCERNING DIVORCE

Chapter I

1–2. B. Yeḇ 112b; Ḳid 5a.

1. "geṭ"—the Aramaic term for a deed; it has come, however, to refer specifically to a bill of divorcement, and will be so used here henceforth.

2. "with or without her consent"—after R. Gershom's reform the woman's consent is also necessary.

3. B. Ḳid 5a; Giṭ 24b, 77a.

"specifically for her"—see below, iii, 1.

"any authority"—thus, if he makes a condition that keeps her dependent upon him, as for example, if he says "this is your geṭ, on condition that you eat no meat ever," it is not a valid geṭ.

"as will be explained"—see below, viii, 11.

"as will be explained"—see below, v, 1.

4. B. Ḳid 6a, 85a.

5. B. Giṭ 81a.

"as will be explained"—see below, v, 8.

"as will be explained"—see below, x, 18.

6. B. Giṭ 20b.

7. B. Giṭ 21b.

"formal part"—*ṭofes,* the part that is the same in all bills of divorcement, not including the names of the parties concerned, the date, and the place. The latter are called *toref,* or the particular part, which makes the document binding.

8. B. Giṭ 21b.

"perforated pot"—the perforations are at the bottom of the pot, so that the leaf may be considered attached to the ground below.

"pluck the leaf off"—see above, Sec. 6.

"surface of the pot itself"—the pot itself is not considered attached to the ground.

9. B. Giṭ 78a.

"he shall write . . . and give"—the verse reads in full, *he shall write her a bill of divorcement, and give it into her hand.* In the Hebrew the words *divorcement* and *give* are next to each other, and this is taken to imply that the giving must be explicitly that of a geṭ.

10. B. Giṭ 55a.

11. B. Ḳid 78a; MSh 4:7.

12. B. Giṭ 78a.

13. B. Giṭ 2b.

"forbidden unions"—see above, 1, i, 5.

"liable to the death penalty"—see V, 1, i, 6 (YJS, *16,* 11).

14. B. Giṭ 86a.

"the husband writes it"—which is the best evidence that it is genuine.

"although it disqualifies her from marrying a priest"—even though the geṭ is defective. A priest is forbidden to marry a divorcée (Lev. 21:7). Some manuscripts omit this statement as superfluous and self-evident. See KM *ad loc.*

15. B. Giṭ 36a, 11a.

16. "disqualified"—see above, 1, iv, 6.

"the geṭ is produced by her"—and the signatures of the witnesses have been validated, in which case the husband cannot protest it.

"is defective"—see Tosafoṭ to B. Giṭ 4a, *s.v. Dĕ-ḳeyyama.*

17. B. Giṭ 4a; Sanh 28b.

"an inherent flaw"—i.e., although the delivery took place in the presence of two qualified witnesses, and it is these witnesses who are the determining factor, yet because of this flaw the geṭ cannot be considered valid. Thus it might have been better if there had been no witnesses at all.

18. Tos Giṭ 9:11; B. BB 162b; P. Giṭ 9:7.

19–20. B. Giṭ 19b.

19. "under his clothing"—literally "into his hand." The translation follows the interpretation of Rashi *ad loc.*

"they must . . . read it again"—since he may have changed the document to another while he had it concealed under his garment.

21. "doubtfully divorced"—see below, x, 3.

22–23. B. Giṭ 19a.

22. "there is no cause for apprehension"—the presumption is that the witnesses had not read the geṭ first. If they find only one mĕzuzah, there is no room for doubt—it was this mĕzuzah that the husband threw over, and therefore the woman is not divorced.

23. "a Rabbinic enactment"—where more leniency is permitted than in the case of a Biblical law.

"as we have explained"—above, Sec. 15.

24. B. Giṭ 36a, 10b, 17a; P. Giṭ 4:3.

"in full"—so that the witness may be identified by his name, and not by some other mark, such as his handwriting.

"subsequent to her infidelity"—in order to cover up her transgression, so as not to disgrace his own kinswoman.

25. B. Giṭ 86a, 80a.

26. B. Giṭ 17b; B. BB 172b.

"the geṭ is valid"—all these are obvious and clumsy attempts to perpetrate some sort of fraud, and are easily exposed.

27. B. Giṭ 80a.

"from the creation"—of the world (B.C. 3761), which is the practice followed today.

"reign of Alexander"—actually 312 B.C.E., when the Seleucid empire was founded.

"the date of the government of that time . . . the geṭ is valid"—even though the general custom is to count from the creation, etc.

28. B. BB, 172a; Yeḇ 116a; Giṭ 80a.

"as will be explained"—see below, v, 8.

"Tishre"—the first month of the religious year.

"Nisan"—the seventh month of the religious year.

Chapter II

1. B. Ber 34b; Ḳid 41b.

"who tells someone else to deliver it to her"—i.e., by appointing him as his agent.

"only with a writ"—see above, i, 3.

"take hold of it herself"—see above, i, 12.

2. B. Giṭ 65a.

"they may write it, sign it," etc.—i.e., one of them may act both as scribe and as one of the two statutory witnesses, although normally, according to Maimonides, the scribe should not act also as a witness. See KM to ix, 27.

"as his agents and as his witnesses"—an agent may act also as a witness (see above, i, iii, 16).

3. B. BB 167a.

"causing her to become forbidden"—if she should marry another man on the false basis of this geṭ, she would become forbidden to her first husband.

4. B. Giṭ 66a; BB 167a.

"In times of danger"—for example, if the husband is seriously ill and there is no time to investigate.

"The woman may . . . pay"—in order not to delay the proceedings, if the husband should refuse to pay; although logically, since he issues the geṭ, he should also pay the costs.

5. B. Giṭ 72a, 71b.

6. B. Giṭ 67a, 63b, 72a.

"This geṭ is defective"—because it is likely to be fraudulent, since the woman may hire these persons to tell the scribe and the witnesses, in the name of her husband, to write the geṭ and sign it.

"defective . . . null and void"—for the difference between the two terms (*pasul* and *baṭel*, respectively) see the next Section.

"close to being null and void"—because, as stated in the preceding Section, the husband himself must tell the scribe to write and the witnesses to sign.

7. The practical difference between a geṭ that is disqualified according to Biblical law and one disqualified according to Rabbinic law is that in the former case the status of the woman remains unchanged and she does not cease to be the legal wife of her first husband (see below, x, 1), while in the latter case she is merely not free to remarry, and if she does remarry nevertheless, she must leave her second husband. If, however, a child is born of this second marriage, it is legitimate.

8–9. B. Giṭ 63b.

8. "If the husband brings . . . a . . . geṭ"—in contradistinction to a geṭ delivered by an agent, where a number of precautionary measures are taken (see below, vii, 5–7).

9. "doubtfully divorced"—see below, x, 3.

10–11. B. Giṭ 65b.

10. "his words have no effect"—because each of these terms is too ambiguous to constitute effective divorce.

11. "Leave her"—although in the preceding paragraph this same term is effective. The difference is that in the preceding paragraph the Aramaic word is used, while in this paragraph it is its Hebrew equivalent. In the Aramaic the term had generally become associated with divorce.

"Make her permitted"—the Hebrew term is applicable to a number of subjects other than divorce.

12. B. Giṭ 65b; P. Giṭ 6:5.

"only money"—though normally the punishment for such a crime is not death; the mere fact that he is led out in chains makes him fear for his life.

13. Tos Giṭ 4; P. Giṭ 6:6; B. Giṭ 66a, 72b.

"gullet and windpipe"—literally "tokens," referring to the two organs that must be severed in lawful slaughtering of animals for food.

14. B. Giṭ 67b; Er 65a.

"Lot's drunkenness"—see Gen. 19:33.

15. B. Giṭ 70b.

16. B. Giṭ 71a; P. Giṭ 7:1.

"the rule concerning a deaf-mute"—see the next Section.

17. B. Yeḇ 112b; Giṭ 71a. In the first instance the divorce comes to dissolve a marriage that is valid according to Biblical law; in the second instance it comes to dissolve a marriage that is valid only by Rabbinic enactment.

"as we have explained"—see I, iv, 9.

18. B. Keṯ 47a; Giṭ 64b; Ḳid 44b; Giṭ 65a.

"the agency of her father"—see Deut. 22:16.

"minor"—less than twelve years old.

"maiden"—aged between twelve and twelve and a half.

19. B. Giṭ 65a.

20. B. Giṭ 88b; BB 48a.

"may be legally compelled"—i.e., if there are grounds for divorce (see I, xxii, 11).

"if heathens on their own initiative"—while a divorce given under duress from a heathen court is valid according to Biblical law, the Sages declared it invalid, as a precaution against fraud (B. BB 48a).

Chapter III

1–3. B. Giṭ 24a f.

2. "for the purpose of divorce"—while in the preceding Section the purpose was merely instruction or practice in writing, and not actual divorce.

3. "even though," etc.—whereas in the preceding Section it was not written expressly even for the man who is divorcing.

4. B. Giṭ 25a, 20a.

"whichever wife"—referring to the wives in Sec. 3, who have identical names.

"the divorce is in doubt"—for her status see below, x, 3.

5. B. Giṭ 79b.

"old geṭ"—the term for a geṭ that was not used when written, and was followed by a situation indicating reconciliation, as when the husband secludes himself with the wife after the geṭ had been written.

"Her geṭ antedates the birth of her child"—i.e., since he gave her the geṭ at a later date than the date it was written, the legitimacy of the children born between the date of the geṭ and the date of its delivery would be suspect, because people would look only at the date of the geṭ, and might not remember that it was delivered later.

6. B. Yeḇ 52b.

"his yĕḇamah"—she is subject to levirate marriage to her brother-in-law, and may not marry anyone else unless he first releases her with the ceremony of ḥălişah. Hence it is doubtful whether she has the status of an espoused woman.

"doubtful validity"—see below, x, 3.

7. B. Giṭ 26a.

8. B. Giṭ 34b.

"the geṭ is valid . . . Because the requirement," etc.—the Yemenite MSS read "the geṭ is defective, because the requirement," etc.

"There is . . . one authority"—quoted by Alfasi, Giṭ chap. 9.

"has a flaw within it"—i.e., it would have been better had the witnesses not signed the geṭ at all, than to have their signatures legally flawed.

9. B. Giṭ 27a.

"by sight"—and not by specific identification marks.

10–11. B. Giṭ 27b.

11. "clear identification mark"—a specific and not a general mark of identification.

12. B. Giṭ 86b.

"two persons"—obviously bearing the same name.

"the other becomes null and void"—since it is uncertain to whom it belongs.

13. B. Giṭ 34b, 87b.

"surname"—the family name or any other descriptive name, instead of the usual manner of writing his and her forename, followed by the father's name.

14. B. Giṭ 34b, 80a.

15. B. Giṭ 80a, 22b; Ḥul 5a.

"Even the woman herself"—but she must then give it to her husband, who in turn must deliver it to her as the instrument of divorce.

"profanes the Sabbath"—profanation of the Sabbath was considered in Rabbinic law to be as grievous as idol-worship.

16–18. B. Giṭ 23a.

16. "might follow his own idea"—and may not write the geṭ expressly for the people concerned, even if instructed to do so.

17. "formal . . . particular"—see above, Sec. 7.

18. "as we have explained"—above, Sec. 7.

19. Tosafoṭ to Ḥul 14a, *s.v. haš-šoḥeṭ*.

"unwittingly"—he was unaware that this day was Sabbath or Day of Atonement.

"are disqualified according to the Torah"—see XIV, II, X, 3 (YJS, *3*, 103); they desecrated the holy day by writing on it.

Chapter IV

1. B. Giṭ 19a.

"ordinary ink"—in Talmudic times ink was made chiefly of soot mixed with olive oil and balsam gum and hardened into a pitchlike substance; before use it was dissolved in a liquid. See II, III, i, 4.

2–3. B. Giṭ 19a, 20a, 21b.

2. "scroll"—i.e., parchment.

"the writing would not be visible"—its color being the same as the parchment's.

"forbidden for benefit"—i.e., forbidden not only for consumption but also for any other use; for example, the hide of an animal offered by heathens as a sacrifice to their idols.

"can be falsified"—see the next Section.

3. "erased paper"—just as the original text had been erased, so also may the text of an earlier geṭ have been erased, up to the signature of the witnesses, and another geṭ, with other stipulations, may have been written over it. The same apprehension applies to the other instances mentioned. The geṭ is valid, however, because it must be delivered in the presence of witnesses, who would be able to tell if a new condition has been substituted for an old one.

4–5. B. Giṭ 20b.

4. "cannot be falsified"—because tattooing is permanent.

"witnesses to delivery"—see above, i, 15.

"doubtfully divorced"—see below, x, 3.

"livestock"—literally "animals kept in a fold." Livestock are liable to stray; therefore, if they are found in a person's possession, this fact alone is not evidence that he is the legal owner—they may have strayed thither. Hence there is no presumptive title in this case. A bondsman was regarded as belonging in the same category.

5. "is in her possession"—and she claims that her husband had divorced her with it.

"the board is hers"—but it is assumed that she had given it to her husband prior to the writing of the get; otherwise the witnesses would not have signed.

"no witnesses to delivery"—had there been witnesses to delivery, they could have been interrogated as to whether everything was done properly.

6. B. Git 20a.

"this constitutes writing"—the principle is that when the letters themselves are shaped, as when one scoops out the vertical strokes ("legs") of the letters, it is called writing; but if the letters appear in reverse relief, because one has scooped out the hollow space within them, it is not called writing.

7. P. Git 2:3; Tos Git 2:4; B. Git, 87b, 19b.

8. B. Git 87b; Tos Git 9:9.

9. B. Git 87b.

10. B. Git 85b; Tosafot *ad loc., s.v. u-lorkeh.*

11. B. Git 85b.

"defective"—and not null and void. See above, ii, 7.

12. B. Git 85a f., 34b.

"era of documents"—see above, i, 27.

"(it happened thus)"—is in parentheses because there is a difference of opinion as to whether it should be used. The present practice is to omit it. See ŠEE 126,8 and 154,101.

13. B. Git 85b.

14. RABD comments that this rule applies only if the husband himself had written the get or had the scribe write it thus incorrectly. If, however, he had told the scribe to write the get, and it is the latter who is responsible for the errors, and if the husband does not challenge the validity of the get, it is valid. Moreover, even if the husband protests, but the witnesses testify that the errors are scribal, the get is still valid.

15. Tos Git 9:8; B. BB 161b; P. Git 2:3; B. BB 118b.

16. Tos Git 9:12.

17. B. Git 21b.

"as a valid get"—at the time of delivery.

"it is still valid"—see above, Sec. 3, and note to Sec. 14.

18. B. Git 86b.

19–21. B. Git 87a.

19. "these gets are valid"—being regarded as two gets; some authorities, however, declared such a get equally invalid.

21. "the signatures . . . form a natural sequence"—the signatures are actually meant to stand only under the first get, but for lack of space were extended under the second get. They still belong to the first get only; there-

fore, in order to be valid, the second get must have witnesses to delivery.

22–24. B. Git 87b.

23. There is actually only one long column. The witnesses' signatures are in the center of the column. The first get begins *below* the signatures and continues downward, to the bottom of the parchment. The parchment is then turned upside down, so that what was the bottom of it is now the top, occupied by the first get, which is now *above* the signatures. The second get is then written *below* the signatures. The position of the two gets thus resembles that of two men lying in one line on the ground, with the tops of their heads touching.

24. "not trimmed"—and it is certain therefore that these are not parts of two documents, i.e., the beginning of one and the end of the other.

25. B. Git 87a.

Chapter V

1. B. Git 77a.

2. *Ibid.;* B. BM 12a; see also XII, 11, iv, 2 (YJS, *5*, 121).

"disadvantage"—a courtyard has the same status as an agent appointed without the knowledge of the person in whose behalf he is to act, and such an agent may act only in matters that are to the principal's advantage.

3–4. B. Git 79a.

3. "three handbreadths"—legally, when a thing comes that near to the ground, it is considered the same as if it had actually reached the ground.

"that it actually lands"—when it becomes valid retroactively to the time when it came within three handbreadths from the roof.

"inasmuch as it is not going to land"—once there is no possibility of its eventual landing, its reaching within three handbreadths has no effect.

5–6. *Ibid.;* B. BM 12a; Zeb 25b.

5. "[and lands]"—this clause is missing in the Yemenite MSS. The get does not actually have to land. See the next Section.

6. "the inner courtyard is protected"—the get therefore is regarded as having landed in her domain.

7. B. Git 79b.

"not particular"—the husband would not normally tolerate another person's domain within his own domain, unless the object is of no consequence to him, such as a basket without a bottom which is therefore of no practical value. If it has a bottom, it comes under the normal assumption given above, unless it is known for certain that he does not mind.

8. *Ibid.;* B. Ber 25b.

"ten handbreadths high"—which makes it a separate domain, out of the husband's jurisdiction, even though the legs, being less than ten handbreadths high, are normally within his domain.

9. B. Git 77b.

"does not delimit"—i.e., does not define the limits of the area that he has lent her.

"If the get rolls over"—after landing within her four cubits. She is

therefore divorced even if it rolls away, unless it lands on an object that is considered a separate domain.

"individual name"—literally "attached name." This lends it individuality.

10. B. Zeḇ 25b; BM 12a.

11. B. Giṭ 79b.

"are separated"—i.e., are regarded as separate domains.

"are not particular"—and therefore would not consider her a trespasser.

12–14. B. Giṭ 78b.

12. "bound to be destroyed"—these elements were there before he threw the geṭ, and he knew that if he threw it to her it would surely fall into them.

15. B. Giṭ 78a.

"his own four cubits"—the four cubits surrounding him. Since he was there first, he has established his domain there, and the geṭ remains in his domain until it reaches her hand.

"inasmuch as it has landed within her own four cubits"—and therefore should be a valid geṭ, since she was there first and has established her right of domain to the four cubits. It is rabbinically defective, however, as a precautionary measure, since "nearer" and "midway" are not exact measurements and may later be disputed.

16. B. Giṭ 78b.

"cannot pull it back"—the string is so slender that a pull would snap it apart.

17. B. Giṭ. 78a.

"bound"—and thus cannot act on his own. He therefore resembles her inanimate property which can acquire title for her. See the next Section.

18. B. Giṭ 21a.

"whether by deed, by money, or by presumption"—the three statutory methods of acquisition of property; see XII, 1, i, 8 (YJS, *5*, 5).

Chapter VI

1. B. Giṭ 62b, 63b f.

"reaches her agent's hand"—in contradistinction to the husband's agent, in whose case the geṭ delivered by him becomes effective only after it is handed to her personally.

2. B. Giṭ 64a.

"if he delivered it to the woman herself"—see above, i, 13 and 15.

3. B. Giṭ 62b.

4. B. Giṭ 63a.

"requires no witnesses"—since the geṭ is validated by the witnesses to the delivery.

5. B. Giṭ 62b, 65a.

"conveying or fetching agent"—not a receiving agent. The reason is that the former two are common while the latter is rare.

6. B. Giṭ 23a.

7. B. Giṭ 23b; RH 22a.

"disqualified"—to act as witnesses in court; see XIV, II, x, 3 (YJS, *3*, 103).

"defective . . . there is no get"—for the difference between the two see below, x, 1–2, and above, ii, 7.

8. B. Git 23a.

9. B. Git 63b; BM 10b.

"and let it be mine," some commentators take it to mean "or let it be mine." The Yemenite MSS have "let it be mine," omitting "and."

10. B. Git 62b. The principle involved is that the husband must either say explicitly that he does not wish the agent to act in a receiving capacity, or use the term "convey" when giving the get to him, which implies the same thing.

11. B. Git 63b.

"I appointed you . . . fetching agent"—variant reading, "I did not appoint you anything but fetching agent."

12. *Ibid.*; B. BM 76b.

13. B. Git 63a.

"on deposit in your custody"—this implies that she is appointing him receiving agent for her.

14. "in the presence of two witnesses"—see above, i, 15.

"the status of the agent"—see above, i, 19.

"doubtfully divorced"—see above, i, 21, and below, x, 3.

15. "the get is valid"—see above, i, 16.

"its signatories"—i.e., the witnesses who have signed the get, since the signatures may be verified by the signers themselves or by people familiar with their signatures.

16. B. Git 32a f.

"has already reached her hand"—i.e., after it was voided.

"time needed to make an utterance"—for example, the time it takes a disciple to say to his master, "Peace be unto you, Rabbi." Anything spoken within this short interval is regarded as part of the preceding utterance; anything spoken afterwards is a new statement, and if contradictory, represents a subsequent change of mind.

17–18. B. Git 32a.

19. B. Ar 21b.

20. "what is the remedy?"—since as a result the validity of every get would be in doubt.

21. B. Git 32b; Ḳid 52b.

22–24. B. Git 32b.

24. *"batal"*—the text offers a lesson in Hebrew grammar: a change in one of the vowels of a verb changes the tense, for instance, *batal* is past tense, while *batel* is present tense. The doubt enters here because of the question whether the use of the past tense was deliberate, which would make it a statement contrary to fact, as in the preceding Section, or whether the speaker is simply not careful enough with his language, and actually means that he is annulling the get right now.

25. B. Git 32a.

"Blessed be He who is good and does good"—the regular benediction recited upon hearing good tidings.

"the get is not thereby rendered null and void"—because mere inference of what is in his mind is not enough in this case. See above, Sec. 17.

26. Naz 4:3; B. Ḳid 12b.

"flogging for disobedience"—regular lashes are statutory biblically and are limited to thirty-nine. Disciplinary lashes may be given at the discretion of the court.

"made a declaration"—see above, Sec. 19.

27. B. Ḳid 12b; Git 33a.

28. B. Git 28a f.

29. *Ibid.*; P. Git 3:4; B. Git 13a.

"heathen court"—since such a court is amenable to bribery, it cannot be completely certain that he will be executed.

"the more rigorous regulations"—so that in certain cases he is regarded as still living, and in other cases as already dead. She may not marry, because he is regarded as living; if the husband is a priest, she loses her priestly status, because he is regarded as dead.

30. B. Ket 97b.

"conditions attached to the kĕṯubbah"—see above, I, xii, 2.

Chapter VII

1. B. Git 2a–b.

"within the Land of Israel"—for a get brought from outside the Land of Israel see below, Sec. 5.

"in the presence of witnesses"—see above, vi, 14.

"are unknown in our place"—see above, i, 15. The reason for this lenient rule is that the get is validated principally by the witnesses to its delivery. Should the husband then claim that the signatures are fraudulent, it would be possible to verify them, because of the proximity of the two places to one another. When the get comes from outside the Land of Israel, it is difficult to verify the signatures. See the next Section, and Sec. 5, below.

2. B. Git 23b.

"If the get is lost . . . divorced"—this clause is omitted in some early editions.

"within the Land of Israel"—where the husband's protest can invalidate the get and thereby make her forbidden both to her first husband and to her second husband, whom she married on the strength of this get. If the get comes from outside the Land of Israel, the husband's protest is of no avail. See the next Section.

3. B. Yeb 117; P. Yeb 15:14.

"the wife's mother-in-law"—who may dislike her as the eventual inheritor of her estate.

"her mother-in-law's daughter"—for the same reason.

"her sister-in-law"—literally "her yĕḇamah," i.e., her brother-in-law's wife, who may dislike her as a potential rival co-wife in case of levirate marriage, subsequent to the brother-in-law's decease.

"her husband's daughter"—from a previous marriage, who may dislike her because she took her mother's place.

4. B. Giṭ 29a.

"requires no witnesses"—see above, vi, 4.

"even if the first agent had already died"—it is only if the husband dies before the delivery of the geṭ that the agent's authority ceases.

5. B. Giṭ 2b, 3a, 11a.

"If the agent brings a geṭ," etc.—the underlying idea is that there is not much traffic between such places, and therefore there is little likelihood that the signatures of the witnesses could be verified. Hence the agent must declare that the geṭ was written and signed in his presence. See below, Sec. 8.

"of heathen origin"—hence it might be suspected that the witnesses were not Jews. The reason that this possibility need not be considered is that many Jews do in fact bear non-Jewish names.

6. B. Giṭ 9a, 23b.

"women who dislike each other"—see above, Sec. 3.

"are qualified"—because they cannot possibly do the harm mentioned in Sec. 2, since the husband's protest would be of no avail.

7. B. Giṭ 6b.

"even though . . . unnecessary"—see above, Sec. 5.

"If the agent was not present"—see above, Sec. 5.

"through its signatories"—whose signatures must be verified. If they are authentic, the geṭ is valid.

"one of the three persons"—a court of three is required for the validation of a document. See B. Keṭ 21b.

"defective . . . not validly divorced . . . doubtfully divorced"—for the difference see below, x, 1–3.

"If the geṭ is lost"—and therefore the signatures cannot be verified.

8. B. Giṭ 2b.

"In order to make it unnecessary"—the declaration was instituted as a precaution. Without it the woman would have had to validate the geṭ by having the witnesses' signatures verified. In this case, this would be well-nigh impossible.

9. B. Giṭ 9a.

"clear proof"—i.e., witnesses who testify that when the geṭ was written the agent was elsewhere and could not have attended the writing and signing of it.

"one man's declaration"—normally two persons are required for such testimony. The Sages, however, tended toward leniency in this case, in order to protect the woman's welfare.

10. B. Giṭ 8a, 6a.

"the Great Sea"—i.e., the Mediterranean.

"outside these boundaries"—the Talmud (B. Giṭ 8a) explains it as a straight line drawn from the Mountains of Amnon to the Brook of Egypt (Wādī al-'Arīsh).

"Laws Concerning Heave Offerings"—VII, iii, i, 17.

"Babylonia has the same status as the Land of Israel"—because the courts of Babylonia were considered just as competent as those of the Land of Israel.

11. P. Giṭ 1:1; Tos Giṭ 2:4.

"written . . . signed"—it is the signatures which determine whether a geṭ is written in the Land of Israel or outside of it.

12. B. Giṭ 15a, 6a.

"one line"—not just any line. The commentators differ as to which line. According to Rashi, it is the line that has the date and the names of the parties; according to the Tosafoṭ, the first line of the geṭ. If he has written the first line properly, the assumption is that he will continue to do so with the rest of the document. The current practice is that of the Tosafoṭ.

13. B. Giṭ 15b; P. Giṭ 2:1.

"if he himself was the second witness"—he may not testify to the authenticity of his own signature.

"If he himself and a third person testify"—although he did not see the second witness sign, he may testify that he recognizes his signature.

"the handwriting . . . is attested"—i.e., they recognize the signature.

14. B. Giṭ 16b; Tosafoṭ to B. Giṭ 2b.

"cannot contest"—because he will be contradicted by his own witnesses.

15. B. Giṭ 16a.

16. B. Giṭ 15a.

"through its signatories"—since both were present at the signing, they can testify to the authenticity of the signatures.

17. B. Giṭ 5b. See above, Sec. 7, and vi, 15.

18. B. Giṭ 9a.

19. B. Giṭ 23a, 5b.

"a witness may act also as a judge"—in the same matter concerning which he is testifying.

"a Rabbinic enactment"—the verification of signatures is required only by a Rabbinic enactment. See XIV, II, v, 9 (YJS, *3*, 93–94).

20–21. B. Giṭ 29b.

20. "falls ill," etc.—and is unable to continue his journey to his destination.

"The latter agent need not declare"—since he is an appointee of the court and not of an individual, it is taken for granted that the court knows the proper procedure, which makes it unnecessary to require that the agent make the declaration. See above, vi, 14.

21. "even if the first agent had already died"—because the source of authority is not the first agent but the husband, who is still living.

"Why then is a court necessary?"—because the first agent, if he wants to appoint another agent, must appear in court to do so. The subsequent agents, who must declare that they are appointees of the court, must be appointed by the court.

22. B. Giṭ 30a.

23. B. Giṭ 5a, 24a.

24. B. Giṭ 3a, 24a, 8b.

"ritually forbidden matters . . . money matters"—in the case of money matters, a man's word in his own behalf has no standing in court—he must have the testimony of others. In ritual matters, such as divorce, a person's claim is valid unless it is contested.

Chapter VIII

1. B. Giṭ 74a, 83a.

"Laws Concerning Marriage"—see above, I, vi, 2.

"it is no longer possible for her"—as for example, if the condition was that she give him a certain object, and the object was destroyed or lost.

"It was also explained there"—*ibid.*, Sec. 16.

" 'as of now' or 'with the proviso' "—when these terms are used, the geṭ becomes effective immediately, and not when the condition has been fulfilled.

2. B. Sanh 21b; Giṭ 73a; Tos Giṭ 5:4.

" 'as of now,' or 'if this proviso comes to pass' "—for the difference see the preceding Section.

"in the . . . presence of two witnesses"—who need not observe them *in flagrante delicto;* once seclusion is attested, that is sufficient.

"doubtfully divorced"—see below, x, 3.

"as shall be explained"—below, x, 18.

3. B. Giṭ 23b, 84b.

"with this condition . . . needless to say"—the condition may not be written into the body of the geṭ, because in that case the severance effected would not be complete. All conditions thus must be independent of the document itself. See above, i, 3.

4. B. Giṭ 84b.

"particular part"—see above, iii, 17.

"leaves him some rights"—and the severance is thus not complete, since he has some control left.

"with such and such a proviso"—which is a legitimate condition, in contradistinction to the conditions mentioned in the next Section.

5. B. Giṭ 85a.

"because of consanguinity"—see above, I, iv, 12, 15.

"by a negative commandment"—see above, I, i, 7; iv, 7.

6. B. Giṭ 65a.

"release of thy vows"—see Num. 30:14.

"eat of heave offering"—see Lev. 22:11.

7. B. Giṭ 82b.

8. B. Giṭ 83a.

9. *Ibid.;* B. Giṭ 86a.

"For this reason we write"—see above, iv, 12.

10. B. Giṭ 83b.

"all the days of thy life"—in this instance she will remain tied to him as long as she lives. In the second instance, she may survive the person stipulated, and from the moment of his death a complete severance will come into being.

11. B. Ḳid 5a; Giṭ 83b.

12. B. Giṭ 63a.

"the . . . child is legitimate"—cf. V, I, xv, 11 (YJS, *16.* ∞)

13. B. Giṭ 84a.

"she requires a get from the second husband"—theoretically, since the first get is null and void, she requires no get from the second husband. It was, however, made necessary, because people who had seen her living with him, but were not acquainted with the situation, might otherwise conclude that a woman may leave her husband without a get.

14–15. B. Git 20b.

14. "she is not divorced"—because, having retained ownership of the material on which the get is written, he has in fact given her nothing.

"provided that thou givest me the paper"—even though she must return the paper afterwards, at the moment he gives her the get the paper becomes her property.

16. B. Git 84b, 85a.

"that invalidates the get"—see above, v, 11.

"any other stipulation"—that would normally be valid, but would create a problem, because it is written before the particular part of the get. See above, Sec. 4.

17. B. Git 84b.

18. B. Git 76a.

"another stipulation"—before the first one is fulfilled; he thus may add to, or change, the first condition. See above, Sec. 1.

"may not be joined"—to testify that one of the two conditions was attached to the get, since these two witnesses did not witness the same stipulation.

19–20. B. Git 75b.

19. "If his child or his father dies"—for a differing opinion see Tosafot, *s.v. met hab-ben*. According to that opinion, the get is valid, for his purpose is assumed to have been not to punish her, but to benefit from her services. Hence when he no longer has need of her services, the condition becomes immaterial.

20. "there is no get"—even though it is not her fault that the condition has not been fulfilled. In this case the condition was definitely punitive, since he has specified a time limit; therefore it must be fulfilled in order to validate the get.

21. B. Git 74b.

"are forgiven thee"—this is not considered a cancellation of the condition. To cancel it, he must say explicitly that he does cancel it. See below, Sec. 23, and above, Sec. 17. RABD, however, considers this an explicit cancellation.

"If he dies . . . she is not divorced"—so the Yemenite MSS. The printed text adds "once the thirty days have elapsed," which seems to contradict the next Section.

22. B. Git 74a, 76b.

"Therefore . . . she may not marry anyone other than her levir"—if the deceased has no children, she is eligible first for levirate marriage with her brother-in-law. Variant reading, "Therefore . . . she is doubtfully divorced, and may not marry," etc.

23. B. Git 74b.

24. B. Yeb 88b, 91b.

"she was not subject to betrothal"—the get is null and void, inasmuch as

the condition attached to it has not been fulfilled; she is therefore still the legal wife of the first husband. This precludes betrothal to another man.

"If . . . she had remarried"—the difference between the two cases is that in the former there was only a betrothal, while in the latter the marriage has been consummated, in which case a get is necessary not *de jure* but *de facto*. See below, x, 4.

"as we have explained"—above, Sec. 13.

Chapter IX

1. B. Ḳid 60; P. Ḳid 3:3.

"the positive and the negative"—literally "he must double his condition."

"the other . . . rules"—see above, I, vi, 1–2.

2. B. Ḳid 76b.

3. B. Ket 86b.

"sides of a public domain"—since they do not have the status of a public domain, she has a right to deposit her object in them.

4. P. Ḳid 3:3.

5. "as we have explained"—above, viii, 1.

"as we have explained"—above, Sec. 3.

6. The formula of divorce must be positive, not negative as here.

7. The difference between the first formula and the second is that in the first he must give both the positive and the negative alternatives, while in the second the negative alternative is not necessary, since he uses the term "on condition." See above, I, vi, 17.

8. B. Git 30a; Ket 2b.

9. Git 7:7; B. Git 76b.

10. B. Git 29b.

11. B. Git 72b, 76b.

12. Git 7:3; B. Git 72a.

13–14. B. Git 72a.

15. B. Git 76b. The reason for the divorce being valid in the second case is the use of the formula "on condition," which is regarded as equivalent to the formula "as of now," whereby the divorce becomes valid retroactively. See above, Secs. 13 and 7.

16. B. Git 72b.

"may give rise to the erroneous assumption"—the get is presumed to have been accompanied by no stipulation of the man's death, hence it should be valid as of its date, whether the man subsequently dies or recovers; and in the latter case he should be entitled to revoke it. But if such revocation were permitted, people would assume that even if he explicitly stipulates that the get should become effective after his death, it is valid, which is contrary to the rule "There is no get after death." In this case the get becomes effective immediately, and the analogy of his gift or bequest, which the recipient acquires only after the donor's death and which may be reclaimed by the donor if he recovers (XII, II, viii, 8, 14; YJS, 5, 138–39), does not apply.

17. Git 7:3.

18. *Ibid.;* B. Giṭ 72a.

19. Giṭ 7:4.

"as we have explained"—see above, Sec. 9.

20. B. Giṭ 75b.

"as of now"—see note to Sec. 15.

"distress his mind"—i.e., cause him anguish with the thought that he is already divorced.

21. B. Yeḇ 118b.

"she is doubtfully divorced"—the principle is that the act of a third party in behalf of a person has validity, if it accrues to the latter's benefit. Here a third party has acted in behalf of the woman, but the validity of his act must remain in doubt, because, while to most women it is an advantage not to be subject to levirate marriage, some women may indeed prefer to marry the levir.

22. Giṭ 9:9.

23. B. Giṭ 77a.

26. Giṭ 6:7; B. Giṭ 67b.

27. Giṭ 6:7; B. Giṭ 18b.

"in fulfillment of the condition"—the command, "Sign it, all of you," implies the condition that the geṭ, to be valid, must be signed by all of them, even though only two witnesses are otherwise required.

"the geṭ is defective"—and not null and void, since there are probably at least two qualified persons among the remainder of the ten witnesses. This alleviation, however, is limited to the geṭ, where the most important testimony, for practical purposes, is that of the witnesses to delivery and not that of the signatories to the document itself.

28. B. Giṭ 67b. The purpose of the recommended formulae is to avoid the burdensome suggestion that all of them together must do the writing, signing, and delivering.

29. B. Giṭ 10b.

30. B. Giṭ 66a.

"one may appoint," etc.—i.e., it cannot be said that it is likely that one would give precedence to the father as a matter of courtesy.

31. B. Giṭ 29b.

"My teachers"—the reference here is to Alfasi (on B. Giṭ chap. 6, 63b), who ruled that the woman is doubtfully divorced. According to Maimonides, this decision is based on a textual error.

32. B. Giṭ 2b f.

"the principle," etc.—literally "the agent is to be believed as to permission of a woman of forbidden degree," etc. In this case the woman is regarded as still married to her first husband, until proof is produced that he had divorced her.

"as we have explained"—above, vii, 21.

33. Giṭ 6:3; B. Ḳid 49a; Giṭ 29a.

"merely indicated his wife's whereabouts"—and has not made it a condition that the delivery be made in that place and in no other.

"within that whole time"—i.e., between the time of the agent's commission and the day specified for delivery; the divorce being a matter of

disadvantage to the wife, it should not be imposed upon her prior to the specified date.

34. Giṭ 6:3.

"the geṭ is valid"—the difference between the two cases is that in the first case she appointed him receiving agent, and in the second case fetching agent. In the case of the receiving agent, since the geṭ becomes effective as soon as he receives it, her insistence on the place must be obeyed. In the case of the fetching agent, since the geṭ becomes effective only when it reaches her hand, the assumption is that she mentioned the place merely as an indication of her whereabouts.

35–36. Giṭ 3:5; B. Giṭ 29a.

35. "may not appoint another agent"—since the taking of an article is involved, the husband may not wish to entrust this article to another agent. See below, Sec. 37.

37. Giṭ 3:5; B. Giṭ 29a f.

"the geṭ is valid"—since the husband mentioned the geṭ first, and the article second.

38. "there is no geṭ"—see above, Sec. 33.

"there is no geṭ"—see below, Sec. 39.

39–41. B. Giṭ 29b.

41. "as we have explained"—above, Sec. 9.

Chapter X

1. B. Yeḇ 94a.

2. B. Giṭ 5b.

3. "forbidden degree"—see above, I, i, 5–8.

"seven benedictions"—forming part of the marriage ritual; see above, I, x, 3–4.

"If a man divorces"—the printed text has "Similarly, if a man divorces" (*wĕ-ḵen 'im gereš*), yet the following rule has no similarity to what precedes. The Yemenite MSS read "Whether a man divorces" (*u-ḵen šeg-gereš*).

4. B. Yeḇ 88b.

"This man has taken back his divorced wife," etc.—which is prohibited by Scripture (Deut. 24:4).

5. Yeḇ 10:1; P. *ibid.* 14:1.

"whose act of marriage is not completely valid."—see above, I, iv, 9.

6. B. Yeḇ 89b f.

7. Yeḇ 10:1.

"anything that she may find"—for the privileges and obligations of a husband see above, I, xii, 1–3.

"stipulations of her kĕṯubbah"—above the statutory amount.

"iron sheep property"—see above, I, xvi, 1.

8. Yeḇ 10:5.

9–10. B. Yeḇ 94b.

10. "Why then was a geṭ made obligatory?"—see above, Sec. 8.

"The espousal was conditional"—and the condition not having been fulfilled, the espousal became null and void.

"He married the sister of his divorced wife"—who is forbidden to marry him so long as the divorced wife is living; see V, v, ii, 9 (YJS, *16*, 19).

11. Giṭ 8:5.

"the receipt"—(Hebrew *šoḇer*), acknowledging payment of the kĕṯubbah by the husband to the wife.

12. Giṭ 4:7; B. Giṭ 47b f.

13. Giṭ 4:8.

14. Yeḇ 2:8–10; B. Yeḇ 25b.

"outside the Land of Israel"—i.e., from place to place outside the Land of Israel, or from a place in the Land to a place outside the Land, or vice versa (above, vii, 5).

"because of her vow"—she had vowed to derive no benefit from her husband, and the latter failed to annul her vow, so that she had to apply to a Sage for annulment. The Sage, finding no lawful ground for annulment, had no choice but to declare the vow binding (cf. VI, ii, x, 119; YJS, *15*, 108).

15. Yeḇ 2:10; B. Yeḇ 26a.

16. Yeḇ 2:10–12; B. Yeḇ 25b, 109a.

"one should avoid," etc.—the reason is given in B. Yeḇ 109a: "It is possible that when she comes of age she will change her mind" (i.e., regret it).

17–18. Giṭ 8:9; B. Giṭ 81a f.

17. "before witnesses"—i.e., witnesses who see them retiring into privacy. See the next Section.

18. "as we have explained"—above, i, iii, 5.

19. Tos Ḳid 1:3.

20. Giṭ 9:9; B. Giṭ 88b.

"as we have explained"—above, i, ix, 22.

21. B. Giṭ 90a.

22. B. Yeḇ 63b; Giṭ 90b.

23. Yeḇ 14:1; B. Yeḇ 112b, 113b.

"food, raiment, conjugal rights"—see above, i, xii.

"he may dismiss her"—but must pay her her kĕṯubbah, since her disability has arisen after the marriage (cf. above, i, xxv, 4).

Chapter XI

1. B. Keṯ 57b; Yeḇ 13:2; B. Ḳid 44b.

"declare her refusal"—see below, Secs. 7 ff.

"as we have explained"—above, i, iii, 13, 17; iv, 8.

2. B. Yeḇ 112b.

"in order that people should not be loath to marry her"—refusal based on minority lapses with the girl's attainment of her majority; refusal based on loss of hearing and speech is likely to remain in force throughout the girl's lifetime, and men would be reluctant to enter a marriage that might be dissolved at will by the wife at any moment in the future.

3. Yeḇ 13:1; B. Yeḇ 108a.

4. Nid 11:6; B. Nid 52a, 46a.

"as we have explained"—above, i, i, 2.

5. B. Nid 46a.

"after this examination"—which is assumed to have revealed no tokens of puberty, her exact status thus being in doubt.

6. B. Yeḇ 109b.

"doubtfully betrothed"—and therefore requiring a geṭ to dissolve that marriage.

"a woman who had heard," etc.—and who must leave both husbands. See above, x, 5.

7. Yeḇ 13:2. See above, I, iv, 7.

8. B. Yeḇ 108a.

"reclining"—around the table, in the Roman fashion, while dining.

9–11. B. Yeḇ 107b f.

9. "an act of the court"—merely certifying that she had refused her husband.

10. "may write for her a bill of refusal"—since the witnesses to the refusal would know both parties.

12–14. B. Yeḇ 11b.

14. "the wife of an Israelite"—i.e., of a commoner and not a priest. Rape does not disqualify a commoner's wife to her husband. See above, I, xxiv, 19.

"warning and seclusion"—see below, v, i, 1–2.

15. P. Yeḇ 14:1.

"as we have explained"—above, ii, 16–17.

"if the divorced wife," etc.—although normally the marriage and divorce of a deaf-mute are valid, they are not valid enough to affect the rights of a normal person. See MM *ad loc.*

16. Yeḇ 13:4.

"who had never betrothed her"—divorce merely terminates a marriage, without affecting its prior validity; refusal, on the other hand, annuls the marriage retroactively, as though it had never taken place.

17. B. Yeḇ 12a.

"she was seemingly his daughter-in-law"—even though, on account of her minority, her marriage to her deceased husband is not considered completely valid, it is valid enough to make her liable to levirate marriage; hence, although she may refuse her levir, her father-in-law is nevertheless regarded as closely enough related to her to be forbidden to her.

18. Yeḇ 4:10; B. Yeḇ 42a.

"ninety days"—the accepted period of time for the recognition of pregnancy (based on Gen. 38:24); cf. Preuss, *Biblisch-talmudische Medizin* (Berlin, 1911), p. 443.

19. B. Giṭ 18a.

20. B. Yeḇ 42b.

"physically incapable"—because of a temporary illness.

"sterile woman"—whose uterus has become atrophied or been removed.

"barren woman"—defined above, I, ii, 6.

21. B. Yeḇ 42a, 48b.

"a woman of goodly form"—see Deut. 21:11.

22. B. Yeḇ 34b f.

"need not wait ninety days"—being a minor, she is presumed to be not yet capable of conception.

"raped or seduced"—and is likewise presumed to have "turned herself over" (*miṯhappeḳeṯ*, i.e., engaged in violent movements in order to eject the semen) as soon as she was released by her violator. Cf. Preuss, *op. cit.*, p. 530.

23. Yeḇ. 3:10; B. Yeḇ 35a.

"she need not wait"—this is thus an exception from the rule set forth in Sec. 20, above.

24. B. Yeḇ 37a.

"he need not be banned"—the prescribed delay is only temporary, hence his offense is also temporary; seeing that his flight accomplishes the purpose of the rule—to prevent the "commingling of the seed"—it is regarded as a satisfactory atonement for his transgression.

25. B. Yeḇ 42a.

26–27. B. Keṯ 61a.

27. "there need be no apprehension"—since it is an unnatural mother who would cause her child's death in order to contract an advantageous marriage, and as stated in Sec. 23, above, enactments are not meant to apply to uncommon cases.

28. B. Yeḇ 36b.

"even if he is a priest"—who is not permitted to remarry his divorced wife (V, 1, xvii, 1; YJS, *16*, 108).

"it no longer matters"—i.e., he may bide with her, his flight having purged him of his transgression; cf. note to Sec. 24, above.

"or consummate the marriage"—*we-lo' li-ḵĕnos;* the Yemenite MSS read *wĕ-lo' yiḵĕnos*, "but he may not consummate the marriage with her," and this interpretation has been accepted by ŠYD 13, 12.

Chapter XII

1. Keṯ 2:5; B. Yeḇ 118a.

"the mouth that forbids," etc.—since her status as a married woman is likewise based solely on her own statement, we must also believe her when she claims simultaneously that she was divorced.

"she is not to be believed"—it is assumed that she can produce no geṯ to prove her claim. In this case her status as a married woman is based on public assumption, and not solely on her own claim.

"valid ground for apprehension"—her claim of being a divorcée, while at present unprovable, may yet be true, hence she may not marry her levir.

2. Keṯ 2:5.

"confirmed"—its authenticity established in court.

"as we have explained"—above, vii, 8, 24.

3. B. Giṯ 64a.

"as we have explained"—above, vii, 2.

"as we have just explained"—above, Sec. 1.

4. B. Keṯ 22b.

"she is to be believed"—this is an exception from the general rule set forth in Sec. 1.

5. B. BB 134b; Giṯ 64a.

"to impair her status"—if she should remarry, and it should then transpire that he had not divorced her, she would be forbidden to either one of the two husbands.

"or it may be . . . and she is not aware"—this clause does not appear in the *editio princeps* (Rome, *ca.* 1480) or in the Istanbul edition of 1509. It evidently is meant to explain the seeming contradiction with Sec. 4, above; in this case, the wife might brazenly maintain a lie to her husband's face, since he might likewise be lying, and both might thus be acting in concert.

6–9. B. Ket 22a–23a.

8. Cf. above, I, ix, 30.

10. B. Ḳid 65b.

11–13. B. Git 64a.

11. "as we have explained"—above, vii, 2.

"the agent is to be believed"—the mere fact that the husband had placed the get in the agent's hand shows that the former trusted the latter to put it to proper use. Hence if the husband now contradicts the agent, the likelihood is that the former has changed his mind, rather than that the latter has made improper use of the document.

12. "though supported by the husband"—the husband can testify only that he had handed the get to the agent for the purpose of divorce; for the actual delivery of the get to the woman—and it is delivery which effects the divorce—there is the testimony of the agent alone. The possibility of collusion thus cannot be excluded, even if the woman herself adds her own testimony, as stated in the following paragraph.

13. "sends it on"—by the hand of another, conveying, agent.

"as we have explained"—above, Sec. 11.

14. B. Git 9a.

"witnesses"—i.e., the witnesses referred to in Sec. 13, who had attested the appointment, by the woman's own receiving agent, of a conveying agent to deliver the get to her. The transmittal and delivery of the get thus being proven, it remains only to prove that the execution of the writ itself was legal, and the authentication of the signatories accomplishes that.

15. Yeb 15:1; B. Yeb 116b; Yeb 16:7.

16. Yeb 15:4, 16:5; B. Yeb 121b.

"presumed to dislike each other"—each of these five sees in her a rival and a person who aims to get what rightfully belongs to them.

"as we shall explain"—below, xiii, 11.

"her husband's daughter"—by another wife, i.e., her step-daughter.

"If . . . it was his intention"—in which case he has an ulterior motive, and cannot be trusted.

17. B. RH 22a.

18. Yeb 15:4; B. Yeb 117b.

19. Yeb 15:5; B. Yeb 117b.

"If . . . two witnesses come forth"—some time after the single witness had testified that the husband was dead. It thus becomes two against two.

20–21. B. Yeb 117b.

22. Yeb 15:4; B. Yeb 117b.

23. B. Ket̲ 22b.

24. Yeḇ 15:5.

"as we have explained"—above, Sec. 15.

"may not testify in each other's behalf"—above, Sec. 16.

"she is willing to make both of them forbidden"—P. Yeḇ 15:7 puts it more pithily: "she may be suspected of having spoiled her own status in order to spoil her rival's."

Chapter XIII

1. Yeḇ 15:1; B. Yeḇ 116a.

2. Yeḇ 15:1; B. Yeḇ 114b.

"not even if she says . . . I buried him"—even though there is no presumption of her being a liar; the world being at war, and both she and her husband finding themselves in the midst of battle, she might have, in her fright, buried a stranger's corpse, mistaking it for her husband's.

3–5. B. *ibid.*

5. "she is to be believed"—unlike Sec. 2, above, where the same statement on her part is not given credence. Famine would not be likely to confuse her judgment to the same extent as the clamor and horror of a battle.

6. *Ibid.* 115a.

7. *Ibid.* 114a.

8. This rule is inferred from the one stated in the next Section, that a minor is to be given credence only if there is circumstantial evidence to support him.

"We have already said"—above, xii, 15.

9. Yeḇ 16:5.

"funeral"—literally "eulogy."

10. B. Yeḇ 25a f.

11. Yeḇ 16:5; B. Yeḇ 121b.

"We have already said"—above, xii, 16.

12. B. *ibid.*

13. B. Gi̲ṭ 28b.

14. Yeḇ 16:7; B. Yeḇ 122b.

15. B. *ibid.*

"We have already made known"—above, xii, 15.

"the deceased's wife may not remarry"—when only a hearsay witness is available, he must perforce be given credence, since the primary witness, who had seen the event himself, is not available, or indeed may be unknown. We therefore presume that the primary witness had actually seen the person dead. When the witness himself, or one of his informants, says that he had seen the event, he is known and available, and must establish his credibility first.

16. Yeḇ 16:4; B. Yeḇ 121a.

"Great Sea"—the Mediterranean Sea. This rule is based on the well-known Talmudic differentiation between "water that has an end" and "water that has no end." It is interesting to note that the eminent Rabbi Isaac

Elhanan Spektor (1817–1896) reversed this decision, on the ground that at present, with no unexplored land left, and with our system of communications, there is no longer any "water that has no end."

"long enough"—the estimates vary from "a short while" (*ša'ah ḳallah*) to three hours.

17. B. Yeḇ 121a–b.

"lions, leopards"—who are not likely to fear man, and if sated, would not devour him or even hurt him.

"snakes or scorpions"—who would instinctively sting him out of fear of him.

"gullet and windpipe"—whose complete or nearly complete severance in an animal constitutes lawful slaughtering (*šĕḥiṭah*).

18. Yeḇ 16:3; B. Yeḇ 120a.

"impaled," etc.—the nailing to the stake is not in itself fatal, the birds may have pecked at nonvital organs, and the wounds made by spear or arrow may be superficial.

19–20. B. Yeḇ 115a.

19. "If he adds, 'I buried him,' he is to be believed"—even though the same statement, when made by the widow, is given no credence (above, Sec. 2). The witness, being a stranger, would have no reason to testify falsely. But if he did not himself bury the corpse, he can testify only that the husband is most probably, but not certainly, dead; hence his testimony is insufficient to legalize the widow's remarriage, and yet sufficient to allow her to stay with her husband if she remarries nevertheless.

20. "Likewise . . . if she does so nevertheless, she need not be dismissed"—this passage seems to have been absent in old MSS, where this Section began "Even if the witness," etc.

"as we have explained"—in the preceding Section.

21. Yeḇ 16:3; B. Yeḇ 120a f.

22. B. Yeḇ 121; Yeḇ 16:6.

"twelve hours"—variant reading, "several hours."

"and becomes swollen"—variant reading omits this clause.

23. Yeḇ 16:6.

24. B. Yeḇ 115b.

"another Isaac, the son of Michael"—the assumption is that there were no two persons named Isaac, son of Michael, living in that place, or if there were, the other namesake would be present there alive. If both are absent, the widow may not remarry until it is ascertained which Isaac is dead. See MM *ad loc.*

25–26. B. Yeḇ 122a.

25. "I buried him"—the insistence on this additional evidence is due to the fact that the heathen did not know the deceased. See above, Sec. 11, and MM *ad loc.*, and Sec. 26.

26. "leading camels"—variant interpretation, "tied with camels' harness ropes."

27. Tos Yeḇ 14:8.

28. P. Yeḇ 16:7; B. Yeḇ 122b.

"written in a document"—although generally valid testimony must be

oral, in conformance with the Scriptural command, *at the mouth of two witnesses* (Deut. 19:15).

"tested in the manner . . . of divorce"—above, ii, 16.

"Such witnesses, who testify to the husband's death"—literally "the woman's witnesses."

"inquiry and examination"—the cross-questioning prescribed for witnesses in criminal cases. See XIV, ii, i, 4–6 (YJS, *3*, 82–83).

"*'ăgunah*"—a married woman who is not free to remarry, because it is not known where her husband is and whether he is living or dead.

29. B. Yeḇ 88a.

"woman of hitherto strictly forbidden degree"—i.e., a woman lawfully married to a man who is still living, and not lawfully divorced from him.

"has testified that So-and-so is dead"—if So-and-so should return alive, the witness's perjury would be irrefutably proven.

TREATISE III: LAWS CONCERNING LEVIRATE MARRIAGE AND ḤĂLIṢAH

Chapter I

1. B. Yeḇ 17b, 13b, 39a, 3b; Yeḇ 4:4.

"it is not necessary . . . to betroth his sister-in-law"—so according to Scriptural law; Scribal law, however, obliges him to perform a betrothal first; see below, ii, 1. Since this entire Treatise deals with the yĕḇamah, this term has been replaced throughout by "sister-in-law," widowed and childless being understood.

"given to him from heaven"—she becomes his wife not by his own choice or act, but merely because his late brother had married her and had no issue by her.

2. B. Yeḇ 39b.

"or if she refuses"—while she is free to refuse, and her levir is then obligated to release her, she is penalized in the same manner as a rebellious wife; see below, ii, 10.

"levirate marriage has precedence"—the accepted practice at present is that ḥălişah has precedence. See ŠEE, 165, 1.

3. Yeḇ 2:5; B. Yeḇ 22a ff.; BB 109a, 115a.

"or the issue of either one"—that is, grandchildren, the son or daughter having predeceased him.

"a bastard"—i.e., a child by a woman whom he was forbidden to marry.

4. B. Yeḇ 22a; Ḳid 68b.

"as no issue"—i.e., the children are not accounted as his.

"the son . . . whom the latter had freed"—and who is thus accounted an Israelite. Since, however, at birth he was not an Israelite, he does not release his mother from levirate marriage. A few Geonim held that such an emancipated child does release his mother, since his father may have freed

her before the child's conception in order to legitimize the child. Such a possibility, however, is considered by Maimonides (above, II, x, 19) as quite remote.

5. Yeḇ 4:1; B. Yeḇ 35b f.; Nid 44b; Shab 136a.

"full nine months"—one day of the ninth month is considered the same as the whole ninth month, hence eight months and one day are regarded as full nine months.

6. Yeḇ 2:5; B. Yeḇ 22a ff., 97b; Nid 29a; Ḳid 69a.

"renders the deceased's wife subject to levirate marriage"—that is, she must perform ḥălişah before she can marry another man; she cannot marry the levir himself if he is a bastard.

"once his head or the major part of his body"—literally "and the major part of his body." The translation "or" follows the rule in V, I, x, 6 (YJS, *16,* 69), according to which once the head or the major part of the body has emerged, the child is regarded as having been born.

"in holiness"—i.e., after his mother had become a proselyte.

7. B. Yeḇ 17b; BB 109b.

"mourning"—if one of these brothers dies, the other is required to observe the statutory period of mourning. See XIV, IV, ii, 1 (YJS, *3,* 166).

"testimony"—one of these brothers may not testify for the other in legal matters, because of consanguinity. See XIV, II, xiii, 1 (YJS, *3,* 110). Both these rules are of Scribal origin.

8. Yeḇ 11:2; B. Yeḇ 10b, 44a, 18b.

"are not regarded as brothers"—since a proselyte or a freedman is regarded as a newborn child at the moment of his conversion or emancipation; cf. V, I, xiv, 11 (YJS, *16,* 94). Hence his slate of consanguinity is thus, in a manner of speaking, wiped clean, and only relationships acquired thereafter are valid (with some exceptions; see V, I, xiv, 12 ff. [YJS, *16,* 94–96]).

"they are still considered strangers"—because when the first brother was conceived, his father was still a heathen, and had not yet become a proselyte; since he was conceived out of holiness, his slate of consanguinity must be wiped clean, and the father's subsequent conversion is not retroactive.

9. Yeḇ 11:2; B. Yeḇ 98a, 97b.

10–11. Yeḇ 4:11; B. Yeḇ 44a.

10. "eligible to marry a priest"—a divorcée, for instance, is already ineligible to marry a priest; hence ḥălişah, which also makes a woman ineligible (above, I, i, 7), will not affect her status unfavorably.

11. "If he can marry them all"—i.e., if he can afford to support them all properly (above, I, xiv, 3). Obviously this does not apply in countries where polygamy is banned by R. Gershom's edict.

"from each household"—i.e., from each brother. See above, Sec. 9.

12. B. Yeḇ 10b f., 54b.

"a negative commandment deduced from a positive commandment"—see above, I, i, 8.

"forbidden relatives of second degree"—see above, I, i, 6.

"are subject to betrothal"—and therefore his refusal of his sister-in-law, by way of ḥălişah, is equivalent to divorce; see the next Section.

13. Yeḇ 4:7; B. Yeḇ 40b, 17b.

"her relatives . . . are just as forbidden"—because she now assumes the status of his divorced wife.

"the same status as his divorced wife"—see V, I, ii, 7 (YJS, *16*, 18).

"while still under levirate tie"—this obligation in itself lends her the status of his wife.

14. Yeḇ 4:9; B. Yeḇ 41a.

"as we have explained"—above, Sec. 13.

15. B. Yeḇ 39a.

"he may take her back"—and it cannot be said that once he has performed his obligation of levirate marriage and has divorced her, she reverts to her former status as his brother's wife who is forbidden to him.

16. Yeḇ 13:12; B. Yeḇ 119a, 111b, 61b, 96a; Nid 46a, 45a.

"Laws Concerning Matrimony"—above, I, xi, 3.

"handed down by tradition"—an oral tradition going back to Moses and handed down orally from generation to generation. See XIV, III, i, 2–3 (YJS, *3*, 138–39).

"he must . . . retain her"—since he, being a minor, cannot divorce her.

"and has been examined"—for tokens of puberty. As far as ḥălişah is concerned, there can be no automatic assumption that at the statutory age the tokens of puberty are present.

"until he has had intercourse with her once more"—and then divorced her. If he refuses to perform this second act of intercourse, she requires both a get, on account of his first act of intercourse during his minority, and ḥălişah, on account of his refusal to marry her after he came of age.

"as will be explained"—below, V, 21.

17. B. Yeḇ 105b.

"until she is examined"—see note to Sec. 16, above.

18. Yeḇ 13:12; B. Yeḇ 105b. In the Yemenite MSS, Secs. 17–18 form one Section.

"they must be kept together"—since being minors, they can neither be divorced nor perform ḥălişah; after they come of age they can decide for themselves whether they wish to remain husband and wife or be divorced.

19. Yeḇ 4:10; B. Yeḇ 43a, 41b.

"just like any other wife"—see above, II, xi, 18. The ninety-day waiting period was instituted for widows, divorcées, and sisters-in-law in order to make sure of the parentage of the child. If the mother waits less than three months, and then gives birth less than nine months after the wedding, she may have conceived the child by her previous husband.

"And why may she not perform ḥălişah within the ninety days?"—since the purpose of the waiting period is to determine parentage in case of pregnancy, this consideration cannot apply to ḥălişah, in which no parentage is involved.

20. Yeḇ 4:1.

"submits to ḥălişah"—within the ninety days, before the appearance of the symptoms of pregnancy.

"and she is then found to be pregnant"—see above, Sec. 5.

"if the child does not survive for thirty days"—and it is not known whether it was premature or full term. In the latter case, as stated in Sec. 5, above, the mother is released from either levirate marriage or ḥălişah.

21. B. Yeḇ 36a.

22. Yeḇ 4:2; B. Yeḇ 35b.

"because she is a forbidden relative to him"—and therefore their marriage is null and void.

23. B. Yeḇ 42a, 37a; Yeḇ 4:2.

"The levir must . . . dismiss her"—she may not stay with him, because the child may be by her first husband. She requires a geṭ, however, because the child may also be by her second husband.

"the child is legitimate"—whether it is actually by her first husband or by her second husband.

"bastards out of doubt"—if the first child is by the levir, all subsequent children are likewise legitimate; if it is by her first husband, the subsequent children are the issue of an illicit marriage, and are thus bastards. Hence the doubt.

Chapter II

1. B. Yeḇ 52a; Ḳid 44a.

"until he has betrothed her"—see above, I, iii, 21.

"does not effect as complete a marital acquisition"—for example, she does not become his heir. The marriage must be completed by way of intercourse.

2. B. Yeḇ 52a.

"the marriage benediction"—see above, I, x, 3.

3. Yeḇ 6:1; B. Yeḇ 54a.

"initiates . . . consummates"—for a definition of these terms see V, I, i, 10 (YJS, *16*, 12).

4. B. Yeḇ 54a, 22a.

"If, however, he falls from a roof," etc.—such an eventuality, however remote, is cited merely as an extreme case; the rule applies to any accidental and unpremeditated act.

"while intoxicated"—note that the rule is limited to intoxication, and does not apply to insanity; an insane levir's intercourse with his sister-in-law constitutes a valid act of acquisition (below, vi, 3), since it presupposes intent and awareness of what he is doing.

"If his intent is something else"—so the printed text; the Yemenite MSS and the *editio princeps* read, "If his intent is to ejaculate against the wall," meaning to masturbate.

5. Yeḇ 13:12; B. Yeḇ 111b f.

"If he has already divorced her," etc.—the geṭ is evidence in his favor, since the presumption is that he had indeed consummated the marriage, and then dissolved it by means of the geṭ, thus making her free to marry any other man. On the other hand, her claim that there was no sexual intercourse between them casts doubt upon his declaration, and thus the only

solution remaining is ḥălişah, after which she is certainly free to remarry in any case.

"If he has not yet divorced her," etc.—he may either continue the marriage, or else submit to both ḥălişah and divorce, thus again making her free to remarry in any case.

"he should be requested"—and not compelled, since it is his privilege to continue the marriage, if he so wishes; the presumption in this case is that he claims he did have intercourse with her. If he admits that he did not, he is compelled to submit not only to ḥălişah but also to divorce.

"he may not be believed," etc.—because there is the assumption that since he had married her, he had intercourse with her, and thus made ḥălişah unnecessary.

6. Yeb 2:8; B. Yeb 24a.

"signifies the first-born of the brothers"—even though the literal meaning clearly signifies the first male child to be born out of the levirate marriage. In other words, tradition interprets *that she beareth* as "that she (meaning the deceased husband's mother) had borne," i.e., the eldest of the surviving brothers-in-law of the widow.

"to raise the name of his deceased brother"—see Deut. 25:7.

"and not to those of the sister-in-law"—the Yemenite MSS and the *editio princeps* read "as well as to those of the sister-in-law."

7. Yeb 4:5; B. Yeb 39a, 24a.

"either submit to ḥălişah or marry her"—in countries where the edict of R. Gershom is in force there is no such choice; if the levir already has a wife, he must submit to ḥălişah by his sister-in-law.

8–9. Yeb 4:6; B. Yeb 39a.

10. B. Ket 64a.

"a wife who has rebelled against her husband"—see above, I, xiv, 8. This, too, does not apply in countries where the edict of R. Gershom is in force, since there only ḥălişah is possible.

11. Yeb 2:8.

"no attention need be paid to her"—note that Maimonides does not add here, "and she is to be regarded as a rebellious wife." The authorities differ as to whether she should be so regarded.

12. Yeb 2:8; B. Yeb 24a.

"the other brothers are all on the same level"—RABD and later authorities disagree with this ruling and think that the rule of seniority remains in force.

13. B. Yeb 39a.

"like any other rebellious wife"—other authorities do not regard her as rebellious, since she was willing to marry the absent levir, even though he eventually refused her. See above, note to Sec. 11.

14. B. Yeb 85a, 4a; Ket 7:8.

"concerning whom we have said," etc.—see above, i, 5, and below, iii, 4, 13, 14; vi, 7.

"if she has one"—this excludes the sister-in-law widowed after espousal (see above, I, x, 11) or originally forbidden to her late husband (see below, Sec. 7).

"other male blemishes"—enumerated above, I, xxv, 11.

"his field is flooded"—meaning it is an act of God; see above, note to I, xxv, 4.

15. Yeḇ 13:13; B. Yeḇ 111b f.

"during her late husband's lifetime," etc.—her vow was thus intended not to release her from levirate marriage, but rather to show that she is averse to any conjugal relations, not merely with her husband or levir, but in general with all men, for some organic reason. Hence she is not a rebellious wife vis-à-vis the levir. Since he may not marry her because of this vow, he must submit to ḥălişah. And since she is not a rebellious wife, she is entitled to her kĕṯubbah.

"after her husband's death"—in which case her intention is obviously to escape marrying the levir.

"the levir should be requested"—but not compelled; if he agrees, he must pay her her kĕṯubbah.

"If he refuses"—he makes her a rebellious wife, and is then obligated to submit to ḥălişah, while she forfeits her kĕṯubbah (above, Sec. 10).

"the levir may not be compelled to submit to ḥălişah"—which would entitle her to her kĕṯubbah.

16. B. Keṯ 64a; Yeḇ 39b.

"like any other widow"—see above, I, xviii, 1.

"an *'ăgunah*"—a wife whose husband is absent, and who therefore is unable to obtain a divorce and remarry.

"no other woman will be given me to wife"—so long as his tie to his sister-in-law is not resolved by either marriage or ḥălişah.

"a quarrel may arise in his house"—since his wife may continue to regard the sister-in-law as her rival, so long as the tie is not resolved. Later authorities are inclined to think that if both parties agree neither to marry nor to perform ḥălişah, the matter should be considered settled, since levirate marriage and ḥălişah are merely a debt of piety due to the deceased husband—if the parties are willing to discharge it, well and good; if not, no compulsion should be brought to bear upon them.

17. B. Yeḇ 85a, 84a.

"as will be explained"—below, VI, 13.

"the rule governing it"—see above, I, xxiv, 3.

"had written for her no kĕṯubbah at all"—even though she was not forbidden to him.

"the levir must write a kĕṯubbah for her"—just as any husband must do if he wishes his wife to abide with him. See above, I, x, 10. The only difference is that the statutory amount of the kĕṯubbah in this case must be that of a widow. See above, I, xxii, 14.

18–19. B. Yeḇ 92b; P. Yeḇ 10:4.

18. "both are liable to a flogging"—because they have transgressed a negative commandment. See XIV, I, xix, 4 (YJS, 3, 59, item 155). If no intercourse has taken place, there is no such punishment.

"he must dismiss her"—even if the marriage has not been consummated, because the nuptials themselves create the need for a geṭ.

"even if he already has several children by her"—in which case there

would seemingly be reason to say that she ought to be permitted to stay with him, in order to protect the good name of the children.

"and only thereafter is she permitted"—because her status at the outset is that of a married woman, and she is therefore forbidden to both men. There is a difference however: in the case of a married woman, the child is a bastard, while in the case of a yĕḇamah the child is not a bastard, since she is forbidden to others by a negative commandment only. See V, 1, xv, 1–2 (YJS, *16*, 97).

19. "the sinner"—since by her betrothal she has made it impossible for the levir to marry her.

20. B. Soṭ 18b; Yeḇ 92b.

"as we have explained"—above, II, x, 5.

"plays the harlot"—this is less severe a transgression than remarriage, when she becomes forbidden to the levir. The reason suggested is that in the case of remarriage the impression may be created that it was preceded by ḥălişah, and it would appear as if a levir may marry his sister-in-law after he had submitted to ḥălişah by her. In the case of harlotry there is no reason for such apprehension. See B. Giṭ 80b, and Rashi.

21. B. Yeḇ 36b.

"as we have explained"—above, I, 5.

Chapter III

1–2. Ḳid 3:8; B. Ḳid 64b; BB 134.

1. "he is to be believed"—had his purpose been solely to release his wife from levirate marriage or ḥălişah, he could have accomplished it without resorting to a lie, by simply giving her a divorce then and there.

2. "he is not to be believed"—prior to his declaration, she was free to remarry after his death, like any other widow; his declaration would now limit her freedom of choice of a second husband, at least until her alleged brother-in-law submits to ḥălişah by her. Such authority is therefore denied to her present husband, since his mere declaration is insufficient evidence to change her status.

3. B. BB 135a.

"he is not to be believed"—his statement alone is not enough to overcome the contrary presumption.

"there is ground for apprehension"—since testimony by the statutory minimum of two witnesses, whose qualifications and veracity are unimpeachable, is sufficient to overcome a presumption, however widely held.

"when about to die"—at which time no man would ordinarily utter a deliberate falsehood.

4. B. BB 134b; Mak 23b.

"as far as inheritance is concerned"—since even if the child is not his, he may bestow property upon him as a gift.

"The child's status must . . . remain . . . in doubt"—even though, as stated above (Sec. 1), acknowledgment of paternity is effective as far as

legitimate children are concerned. Here paternity is essentially uncertain, and the man's acknowledgment is based on nothing better than surmise.

"the more stringent rule"—which does not free her from levirate marriage or ḥălişah, by acknowledging the child's paternity. Later authorities suggest that the statement "just as she has played the harlot with him, so might she have played the harlot with others," indicates that this rule applies only to a notoriously promiscuous woman or to a married woman (in whose case her own husband might be the child's father), and not to a woman whose reputation is otherwise spotless, in whose case the seducer's paternity would be certain, Cf. V, I, xv, 18 (YJS, *16*, 101).

5. B. Yeḇ 83b f.

"A single witness"—although generally the testimony of two witnesses is necessary, here one is sufficient. In regard to divorce (II, xii, 15), Maimonides explains that where the truth is bound to come out eventually—for example, the fact of a person's death—the testimony of one witness is sufficient. There is evidence, moreover, that the Sages have been generally lenient in cases where the testimony involved a woman's eligibility for remarriage. See above, II, xiii, 29, and below, Sec. 11.

"speaking in his innocence"—see above, II, xiii, 11.

"as we have explained"—above, II, xii, 15.

6. Yeḇ 15:4; B. Yeḇ 119b.

"The five women"—enumerated above, II, xii, 16 (except that the levir's daughter replaces here the husband's daughter, since the husband died childless).

"are also ineligible to testify"—since the same principle, their mutual dislike, which might induce them to lie in order to hurt her, applies here too. If the woman remarries on the ground of their testimony, as they hope she will, and then it is found that the levir is still living, she will have to leave her husband. Hence their testimony is invalid.

"witnesses who contradict each other"—see above, II, xii, 18–20.

7–10. Yeḇ 16:2.

7. "as we have just explained"—in the preceding Section.

8. "but to her levir"—and the only testimony available as to the levir's death is her sister-in-law's, which, as stated in the preceding Section, is insufficient as far as levirate marriage is concerned.

9. "A is permitted"—the Gemara (B. Yeḇ 119b) adds, "If A has both children and witnesses (to the death of her husband), and B has neither, both are permitted to remarry," A because of her children, and B by virtue of the witnesses' testimony to the death of her brother-in-law.

"If another levir is available"—this refers back (Sec. 7) to the two childless sisters-in-law who are both subject to levirate marriage or ḥălişah.

"marry both of them"—since it is his duty to "raise up a name" for each one of his deceased brothers.

10. "as they were at the outset"—since this new husband has died childless, both become again subject to levirate marriage, and may not marry a stranger, even if they both attest the death of this new husband, in accordance with Sec. 7, above. They thus revert to their original condition, when they were first widowed.

"divorced"—and are thus released from the obligation of levirate marriage. The same holds if they have children by him.

11. Yeḇ 15:10; B. Yeḇ 118b, 94a.

"a negative commandment"—when a woman claims that her husband is dead, she is to be believed, because if her husband is still living, and she marries another man, she transgresses a law involving the penalty of death, and the children of that marriage are branded as bastards. Since this law is so severe, she is unlikely to be tempted to tell a lie, and may therefore be believed. In the case of the levir, however, if she claims that he is dead, she is not to be believed, because if the levir is not dead, and she marries another man, she has transgressed a negative commandment which does not involve any Scriptural penalty of death, and the children of that marriage are not bastards. Since the law here is not so severe, she may be tempted to tell a lie. See above, II, xii, 15.

"he may have cast his eyes upon her"—and lied so that he might marry her.

"so that she might enter her house"—a euphemism for supplanting her as the wife of her husband.

"as we have explained"—above, II, xiii, 29.

12–14. B. Yeḇ 118b.

12. "I acquired a brother-in-law"—meaning "my mother-in-law was delivered of a male child, my husband's younger brother."

13. "permitted to marry a stranger"—since her husband was at the time of his death not childless.

"she is not to be believed"—since her declaration changes her status from that of a woman free to marry a stranger to that of a woman tied to her levir; hence the suspicion arises that she may have cast her eyes upon him.

"and may not marry her levir"—since the veracity of her declaration is in doubt, If she is lying, and her husband predeceased her son, she is forbidden to her levir.

14. "she is not to be believed"—here her declaration changes her status from that of a woman tied to her levir to that of a woman free to marry a stranger, and her motives are therefore under suspicion.

"and may not marry her levir"—if she is telling the truth, and her husband predeceased her son, she is forbidden to the levir.

15. B. Yeḇ 119b.

"profaned woman"—sired by a priest out of a woman prohibited to him by law. See V, I, xix, 1 (YJS, *16*, 121).

"We were in a cave when the two of them died"—and therefore there can be no witnesses to corroborate her claim that her husband had died first.

"they would not know that witnesses had come forth"—and had thus annulled her ḥălişah.

16. B. Yeḇ 36a, 119a.

"nine months after her husband's death"—a widow must wait ninety days after her husband's death to ascertain whether she is pregnant or not (above, I, 19). Certainly after nine months the co-wife would either have been delivered of a viable child, in which case no levirate marriage comes into play, or remained childless, in which case she would have had ample

time (six months) either to marry the levir or to perform ḥălişah. Whichever the outcome, the wife left behind would then certainly be free to marry a stranger.

"need have no apprehension concerning her co-wife in another country" —who was left behind. Since pregnancy is presumed to become recognizable within three months of conception, it follows that no symptoms of it were apparent when the husband took his departure. The possibility of her being nevertheless pregnant and producing a viable child is therefore regarded as remote, by the following reasoning: the possibility of conception and non-conception is equal (at least when husband and wife are parted after a short period of time), and of the women who do conceive, some are certain to miscarry. Hence the odds against conception are far greater than those for conception.

"her husband was not with the latter"—and therefore there is no possibility that she might have had a child by him.

17–18. B. Yeḇ 119a; Giṭ 28b.

17. "under her previous presumption"—that the son did not predecease her husband, and hence she is not subject to levirate marriage.

18. "prior to her husband's death"—if the child is born after her husband's death, he cannot be regarded as a levir (see below, vi, 16).

19. Yeḇ 10:3; B. Yeḇ 92a, 49a.

"her child . . . is legitimate"—since it involved the violation of a negative commandment only, which does not carry a Scriptural death penalty. See above, Sec. 11.

"her child . . . is accounted a bastard"—although she had contracted levirate marriage in good faith, the child is nevertheless a bastard, because it is born out of a marriage forbidden under the penalty of excision.

Chapter IV

1–2. Yeḇ 12:6; B. Yeḇ 101b; Sanh 31b.

1. "so advise him"—so the Yemenite MSS. The printed text has "so advise them." Since it is the levir who makes the decision, the Yemenite reading appears to be preferable.

2. "should appoint a place"—in order to publicize the act. In this way the public will learn that she is now eligible to marry anyone excepting a priest.

"to the gate"—where in Biblical times the ruler or the judge ordinarily sat to dispense justice.

"the ḥălişah is valid"—the term *to the gate* being not an essential requirement but merely a statement of the customary place.

3. B. Yeḇ 106b.

"in order that it should not sound," etc.—both English sentences are represented by the same Hebrew sentence, and the meaning depends on the presence or absence of a short pause after the negative particle *lo'*, "not, no," with which the sentence begins. The same caveat applies to the levir's response; see below, Sec. 9.

4. B. Yeḇ 104b, and Alfasi *ad loc.*

"it matters not," etc.—fluency is required, but once acquired is not indispensable, to the extent of impairing the validity of the subsequent ḥălişah. The same principle applies to the mingling of flour and oil for a meal offering; see VIII, v, xvii, 6 (YJS, *12*, 233).

5. Yeḇ 12:1,2; B. Yeḇ 102a f., 101b, 104a; Sanh 34b.

"by day and not by night"—like any other court proceedings, which must take place, or at least commence, in daytime.

"he is disqualified"—according to B. Yeḇ 102a (cf. Rashi *ad loc.*), the reason is the Biblical expression (Deut. 25:10) *his name shall be called in Israel,* implying that each member of the court must be an Israelite on both sides of his immediate ancestry.

6. Yeḇ 12:1; B. Yeḇ 102a ff., 104a.

"shoe, with heel attached"—the Mishnah (Yeḇ 12:1) reads "a shoe . . . [or] a sandal that has a heel-piece"; an ordinary sandal, which has no heel, is thus disqualified.

"not sewn with flaxen thread'—but sewn with leathern thongs, so that the whole shoe consists entirely of leather.

"on that foot"—and on the calf of the leg, but below the thigh.

7. Yeḇ 12:3; Sif Deut. 25:9; B. Yeḇ 106b.

"All this should be recited," etc.—this paragraph concludes Sec. 7 in the Yemenite MSS. In the printed text it begins Sec. 8. The former arrangement seems logically preferable.

8. Yeḇ 12:6; B. Yeḇ 102b f., 106b; Soṭ 32a.

"A blind man," etc.—RABD ruled that if there are no other brothers, the blind brother does qualify at the outset. In fact, the spitting, while statutory, is not essential; cf. below, Secs. 12 and 15.

"in his face"—that is, before him, in his sight.

9–10. B. Yeḇ 106b.

10. "or recites"—the concluding verse, *So shall it be done,* etc., which she alone must recite.

11. B. Yeḇ 105a.

"spitting alone"—when she spat the first time, out of order. See below, Sec. 14.

12. B. Yeḇ 104b ff.

13. *Ibid.,* and Tos Yeḇ 11:8.

"defective . . . as nothing"—for the difference between the two see below, Sec. 26.

"whose act is as nothing"—later authorities, however, have ruled that in the case of a deaf-mute also the ḥălişah is defective, and not null and void.

14. Yeḇ 12:3; B. Yeḇ 105a.

"it is the same as a defective ḥălişah"—which renders her forbidden to marry the levir. The public, having seen her perform the spitting, might assume that she had already removed the shoe, and if the ḥălişah were then declared null and void, might conclude that a sister-in-law might marry her levir even after an imperfect ḥălişah, whereas in fact she may not (below, Sec.. 26).

15. Yeḇ 12:1; B. Yeḇ 101a f., 103a.

"seated, or . . . reclining"—and not standing (above, Secs. 6–7).

"from the knee downward"—and not from the foot upward to below the knee (above, Sec. 6, and note thereto).

"who do not know how to instruct in recitation"—notwithstanding that they are required to know (above, Sec. 5).

"is blind"—and a blind man may not at the outset submit to ḥălişah (above, Sec. 8).

16. Yeḇ 12:2, 4, 5; B. Yeḇ 104a ff., 102a f., 105b; Giṭ 24b f.

"a relative"—to the parties involved or to one of the judges.

"disqualified"—see XIV, 1, ii, 9–10 (YJS, *3*, 9).

"exempt from it"—for example, if she is pregnant by her late husband (above, i, 20).

17. B. Yeḇ 103a, 104a.

"bent backward"—so that the sole and the heel face upward.

"walks on the tips of his toes"—his heel not touching the ground.

"the ḥălişah is defective"—RABD regards such a ḥălişah as valid, for the reason that planting the heel on the ground, while required, is not essential, to the extent of impairing an otherwise valid ḥălişah.

18. Yeḇ 12:1; B. Yeḇ 102b f., 105a; Giṭ 25a.

"bamboo"—so explained by Maimonides himself (PhM to Kel 14:5); the usual meaning is "cork."

19. B. Yeḇ 103a, 102b, 101a, 103b.

"is too large," etc.—so the Yemenite MSS; that is, while the shoe is too large for the levir's foot, it will not fall off if he walks in it. The printed text reads "is not too large, so that he can use it for walking," which seems illogical.

20. B. Yeḇ 103b f. The principle behind these rules is that an object merely forbidden, even if forbidden also for benefit, is not disqualified from being used for ḥălişah. On the other hand, an object that must be burned is disqualified, because it is considered nonexistent. Idolatrous offerings, etc., belong to the latter category. Cf. I, iv, viii, 9.

"under observation for leprosy" etc.—see Lev. 13:47 ff., and X, iii, xii (YJS, *8*, 187 ff.).

"a sandal made out of an offering to an idol"—i.e., made out of the hide of a heathen sacrificial animal. See I, iv, vii, 2.

"a condemned city"—see Deut, 13:13–19.

"was not intended to be used for walking"—and hence cannot be called a shoe.

21. B. Yeḇ 102a f.

"rips the shoe . . . or burns it off"—she tears the shoe apart, or burns it, but does not herself remove it, the pieces of the shoe dropping off the levir's foot by their own weight; hence the ḥălişah is impaired.

22. B. Yeḇ 106b.

"that stimulates the flow"—so the Yemenite MSS. The printed text reads "that increases." The two words (*meziḇin* and *marbin*) look very much alike.

"must issue of its own accord"—since Scripture says, *and* [*she shall*] *spit* (Deut. 25:9), meaning she herself, not vicariously by means of a stimulant.

23. B. Yeḇ 105a, 106b.

24. B. Yeḇ 106a; P. Yeḇ 12:6. The difference between the two cases is as

follows: In the first case, the act itself is with the wrong intent, i.e., the ḥălişah releases the woman, yet he is told it will bind her to him. In the second case, the act of ḥălişah is performed with the proper intent, but there is a condition attached to it. The ḥălişah is in this case valid, because the condition is in itself valid.

"on condition"—the mere term contradicts the act, since there is no such thing as conditional ḥălişah.

"she is to pay you"—so the *editio princeps;* later editions read "you are to pay her," which does not seem to fit the context.

25. B. Yeḇ 106a; Ar 21b; Giṭ 88b.

"in the case of a geṭ"—see above, II, vi, 20. This does not mean that ḥălişah is analogous to a geṭ, for in the case of the latter a nullifying declaration makes the subsequently executed geṭ null and void (above, II, vi, 19), whereas in the case of ḥălişah such a declaration merely proves that it was not his intention to submit to ḥălişah; hence, in accordance with Sec. 16, above, the ḥălişah is only impaired, and not canceled.

"according to law"—see above, ii, 14, and below, vi, 4.

"If they act contrary to law"—the ḥălişah is still merely impaired and not canceled; for the reason see above, II, ii, 20.

"unlettered persons"—who do not know the law.

"or act in error"—even though they are experts in the law.

26. B. Giṭ 24b f.

"not disqualified from marrying a priest"—see above, i, 10, 13.

27. B. Yeḇ 92b.

"and need not be compelled to leave him"—she need not be divorced by him, but must be separated from him until a proper ḥălişah takes place (MM). If there was no ḥălişah at all, and she transgressed and remarried, she must be divorced (above, ii, 18). The reason for the difference is that in the latter case she is penalized for having made herself forbidden to her levir by this premature remarriage; in the former case she is already forbidden to the levir because of the ḥălişah, defective though it is, and there is no reason for a penalty.

28. B. Yeḇ 102b, and Alfasi *ad loc.*

"she may have intended to perform ḥălişah"—resulting, according to Sec. 16, above, in a defective ḥălişah, which makes her forbidden to her brothers-in-law.

29. B. Yeḇ 106a.

"the bill"—literally "the geṭ."

"those who observe"—so the Yemenite MSS and the *editio princeps;* later editions read "he who observes."

30. B. Yeḇ 39; Alfasi to B. Yeḇ, end of chap. 12; P. Sanh 1:2.

"according to the reckoning that we use," etc.—other places used a different era. See above I, i, 27.

"of whom some are signed hereinafter"—there must be five judges (above, Sec. 5), but only three need sign the document.

"according to the law of Moses and Israel"—here the document ends in the Yemenite MSS. The printed text adds "So-and-so, son of So-and-so, witness. So-and-so, son of So-and-so, witness." This is obviously an erroneous

addition, since, as stated above, the signatures should be those of three of the judges, and no attestation by witnesses is needed. See also the next Section.

31. B. Yeḇ 39b.

"or by two of the three"—since the document states that three judges were in session, the absence of the third one's signature does not impair the writ. See XIV, II, vi, 6 (YJS, *3*, 95).

"as we have explained"—above, Sec. 29.

"at the end of the Laws Concerning Divorce"—II, xiii, 29.

"as we have already stated"—above, ii, 2, and I, xxii, 14.

32. B. Yeḇ 32a, 52a; Alfasi, at the end of Yeḇ chap. 12.

33. B. Yeḇ 39b; Giṭ 85b; BB 44b, 160b; P. Giṭ 9:8.

"who serve"—so the Yemenite MSS; the printed text omits "serve."

"the price of thy virginity"—see Exod. 22:16.

"fitting unto thee"—so the Yemenite MSS; the printed text adds "according to the Torah," which seems to be an interpolation, since Maimonides regarded the kĕṯubbah as of Rabbinic, and not Scriptural, origin.

"adjunct to real estate"—normally only land is surety for the kĕṯubbah. If, however, he has acquired land, and there are movables on that land which he has acquired through the acquisition of the land—a valid way of acquiring movables—these, too, may become surety for the kĕṯubbah. Cf. XIII, III, xviii, 2 (YJS, *2*, 144–45).

"unsecured promise"—known as *'asmaḵta*, and having no legal force (XII, I, xi, 2; YJS, *5*, 38)

"a mere documentary form"—a mere sample form, of no legal force.

34. "if she was once a captive"—in the hands of heathens, and therefore forbidden to marry a priest. See V, I, xviii, 17 (YJS, *16*, 117–18).

"one hundred zuz"—see above, I, x, 7, 8.

35. B. Giṭ 6b; P. Meḡ 3:2.

"overlined"—with a metal stylus, leaving a blind impression of a line on the parchment or paper, so as to make it possible to align the letters of the Scriptural quotation evenly at the top.

"ninety days"—see above, i, 19.

Chapter V

1. B. Yeḇ 50b, 52b, 10b.

"gives a regular geṭ to his sister-in-law"—without first marrying her. A regular geṭ dissolves a marriage that has already taken place. Its application to a marriage that has not yet taken place is thus an extension based only on Rabbinic authority. The reason for it is that if levirate marriage were permitted after a regular geṭ, it would logically follow that it should also be permitted after ḥălişah, since both are instruments of releasing a woman.

"as if he had submitted to ḥălişah by her"—which disqualifies her and her co-wives from marrying him or his brothers. See above, i, 12.

"effects the divorcement of a married woman"—that is, of one's wife, and not of one's widowed sister-in-law. The only effect it has is to disqualify the latter from marrying her levirs.

"that would disqualify one's wife from marrying a priest"—that is, that would render his wife a divorcée, and therefore forbidden to a priest. See above, I, x, 1.

"until her levir submits to ḥălişah"—that act alone releases her from the obligation of levirate marriage.

2. Yeḇ 3:5; B. Yeḇ 29b.

"verbal declaration"—see above, ii, 1.

"requires a geṭ"—in order to release her from the declaration, and must perform ḥălişah in order to release her from the obligation of levirate marriage.

3. B. Yeḇ 29b, 50a; Ḳid 2a, 14a.

"refuses to have intercourse with her"—i.e., to live with her, but prefers to release her.

"after her levir's intercourse with her"—and subsequent divorce from him.

"The geṭ alone," etc.—in other words, the verbal declaration does not constitute complete wedlock, hence the subsequent geṭ cannot render the sister-in-law a complete divorcée, free to marry a stranger. Either the levir must first consummate the marriage, thus making the subsequent geṭ completely effective (and making ḥălişah no longer necessary), or else, if he refuses to consummate the marriage, he must submit to ḥălişah, since in this case only ḥălişah can make the sister-in-law free to marry a stranger.

4. B. Yeḇ 32a.

"she remains forbidden to him"—otherwise he would be marrying her after giving her a geṭ, which is forbidden (above, Sec. 1). RABD and Tosafoṭ, however, regard her as permitted to him as well.

5. B. Yeḇ 52b, 50a.

"as we have explained"—above, Sec. 1.

6–8. Yeḇ 5:1; B. Yeḇ 52a, 50b.

6. "whether the declaration is preceded"—and is thus rendered defective later on, at the time it is made.

"or is followed by them"—so that at the time the declaration was made it was valid. Nevertheless, unlike ḥălişah and intercourse, where subsequent acts have no effect, here they do have retroactive effect, inasmuch as a verbal declaration, even when valid, does not constitute a complete acquisition.

9. B. Yeḇ 50a.

"at the outset"—that is, without a preceding verbal declaration. See also above, ii, 1, where a Scribal enactment requires a formal betrothal before consummation of the levirate marriage.

10. B. Yeḇ 50a, 26b, 53a, and Rashi *ad loc.*

"perfect ḥălişah"—which is effective in severing the levirate tie for all the widowed sisters-in-law. See the next Section.

"imperfect ḥălişah"—since if he should change his mind and wish to marry any of the widowed sisters-in-law, he would not be permitted to do so. See below, Sec. 12.

11. Yeḇ 4:11; B. Yeḇ 50a, 27a.

"If there are several sisters-in-law in that household"—i.e., the deceased had several wives.

"become permitted"—to marry a stranger.

"defective intercourse"—see above, Sec. 9.

"defective verbal declaration"—see above, Sec. 6.

"while each one of them"—the Yemenite MSS, the *editio princeps,* and the Istanbul edition of 1509 read "while one of them," i.e., one of the other wives, for whom nothing has yet been done, should perform ḥălişah, and this will release the rest of them from all levirate obligations. See LM, ṬEE 170, and commentary of Elijah of Wilno, note 47, who considers this the correct reading.

12. Yeḇ 4:11; B. Yeḇ 51b, 27a.

13. B. Yeḇ 52a.

"the intercourse was valid or defective"—i.e., was preceded by a verbal declaration or a geṭ, given to her by him or his brother. See above, Sec. 9.

"took place after . . . ḥălişah"—which is forbidden (above, i, 12).

"regular marriage"—between man and woman not subject to levirate tie.

"as we have explained"—above, Sec. 2.

14. Yeḇ 5:1.

"We have already said"—above, Secs. 1–2.

"does not effect a complete severance"—to the extent of permitting her to marry a stranger, since she must still perform ḥălişah.

15–16. B. Yeḇ 50b f.

15. The principle here is that in the first series of cases, the first act is not completely effective; hence the second act has some room left for it and therefore has some effect. In the second series of cases, the first act is completely valid, and any act that follows it is therefore superfluous and has no effect at all.

16. "this ḥălişah is as nothing"—since intercourse consummates the marriage, and thus eliminates the levirate tie.

"and betrothal"—effected by his brother's act.

"she must obtain"—that is, the co-wife, even though the declaration or intercourse is illegal, since having named the first sister-in-law, he has already fulfilled his levirate duty (above, i, 12).

"as we have explained"—above, Sec. 13.

17. Yeḇ 2:7.

"belonging to the same household"—i.e., both of them wives of the deceased.

"must be dismissed with a geṭ"—Joseph Caro (in his commentary to ṬEE 170) claims on Gaonic authority that in addition to the geṭ, one of the sisters-in-law must perform ḥălişah, since it is possible that the first levir had merely made a verbal declaration to one of the sisters-in-law, and had not yet consummated the marriage with her.

"permitted to marry strangers"—because if one of them was the first to contract levirate marriage, the geṭ has now released her; if she was the second, her marriage was illegal, and she is permitted to marry a stranger even before the geṭ.

"forbidden to the levirs"—because each one may have been the second to contract levirate marriage, in which case he is forbidden to both the one he had married and to her co-wife. See above, i, 12.

"he need not be compelled to dismiss his wife"—unless it becomes known that his brother had indeed contracted levirate marriage first, this is a case of double doubt, whether his brother had married first, and whether he had married at all; and an existing marriage cannot be dissolved on such doubly doubtful grounds. Indeed a triple doubt is possible, since his brother may not yet have heard of the deceased's demise, or may not yet have been able to send his proposal of marriage to the sister-in-law.

"he need not be restrained"—because no harm is done in any case. If he is first to do so, he has acted properly. If he is second, the act is unnecessary and is merely a harmless gesture.

18–21. Yeḇ 10:8; B. Yeḇ 96a, 105b.

18. "The intercourse of a minor"—see above, i, 16, and 1, xi, 3.

"disqualifies the adult levir"—see above, i, 12.

"is likewise as nothing"—see above, iv, 16.

19. "as we have explained"—above, Secs. 14 and 7.

20. "If a levir nine years and one day old has intercourse"—such intercourse has the same status as an adult's verbal declaration. See above, Sec. 18.

"he renders her ineligible for the minor levir"—because these acts, subsequent to the minor's intercourse (which has the same status as a declaration), have rendered it defective. See above, Sec. 8.

"one verbal declaration following another"—see above, Secs. 14–15. Since in this case both levirs are minors, their acts of intercourse have the same status as verbal declarations.

21. "she was not subjected to . . . complete acquisition"—therefore the obligation of levirate marriage has not yet been satisfied, and ḥălişah is required to release her from it.

22. B. Yeḇ 79b; Tos Yeḇ 11:2; Yeḇ 10:9; B. Yeḇ 97a.

"as we have explained"—above, 1, ii, 11.

23. Yeḇ 13:8; B. Yeḇ 112b, 109b f.

"as we have explained"—above, 1, ix, 8, 9.

"represent two different categories of betrothal"—the minor's betrothal is valid only temporarily, because she is bound to grow up, and will then either annul or confirm the betrothal. The deaf-mute, however, remains in that condition permanently.

"if all the sisters-in-law . . . are minors or deaf-mutes"—and therefore belong to the same category and are all equal, which is not the case in the following Section.

"the levir's intercourse"—but not ḥălişah by one of the sisters-in-law, since minors and deaf-mutes are incompetent to perform ḥălişah (above, iv, 16).

24–30. Yeḇ 13:8; B. Yeḇ 110a.

24. "does not exempt the other"—since they are not in the same category, as explained in the preceding Section, and it is uncertain which one has precedence.

"What then is the remedy for them?"—since he may not contract levirate marriage with both of them (above, i, 9) nor submit to ḥălişah by either one (ix, 16).

"The minor . . . should be instructed to declare her refusal"—and this

refusal retroactively and posthumously cancels her marriage to her deceased husband, and thus annuls her levirate obligation. See above, II, xi, 3.

"If . . . he wishes to divorce her"—a deaf-mute wife is subject to divorce (above II, x, 23).

"permitted to marry a stranger"—RABD argues that this rule applies only when the deaf-mute sister-in-law is an adult (cf. below, Sec. 30); if both sisters-in-law are minors, the levir should marry the deaf-mute and then divorce her, and wait until the minor comes of age, when she can perform valid ḥălişah.

25. Betrothal by intercourse of a woman who is normal and of age is valid by Scriptural authority, whereas betrothal of a minor or of a deaf-mute is based only on Rabbinic authority. Hence the latter cannot take precedence over the former.

26. "he does not thereby make the former ineligible for him"—since both A and B have the same status, and therefore, if intercourse with A is valid, intercourse with B is invalid. B should, however, declare her refusal, because even though intercourse with her is forbidden and has no effect, it is forbidden only by a positive commandment (above, I, 12), in which case betrothal takes effect. Therefore she must resort to a declaration of refusal in order to undo it.

27–30. In all these cases, two categories of women are involved, and it is obvious that the act of the woman in one category has more validity than the act of the woman in the other category, namely a woman who has come of age versus a minor, and a normal versus a deaf-mute. And yet the act of the woman in the latter category has some validity, and should not be disregarded completely. Hence the various prescriptions intended to satisfy the obligation created by each act.

27. "with whom he had intercourse first"—RABD ruled that the minor does become ineligible, as a precaution, lest intercourse with her should precede intercourse with the deaf-mute. The remedy then is the same, according to him, as below, in Sec. 28—the deaf-mute should be dismissed with a get, and the minor should, upon reaching majority, perform ḥălişah.

Chapter VI

2. Yeḇ 8:4; B. Yeḇ 89b f., 79b; P. Yeḇ 8:5; Tos Yeḇ 11:2.

"congenital eunuch—see above, I, ii, 13; but not a man-made eunuch, below, Sec. 4.

"hermaphrodite"—see above, I, ii, 24.

"unable to beget children"—the whole purpose of levirate marriage is to beget children in order to preserve the deceased brother's name (Deut. 25:7).

3. Yeḇ 14:1; Tos Yeḇ 11:9; B. Nid 45a.

"do not have the intelligence"—are not equipped mentally to have the proper intention, and ḥălişah requires intention (above iv, 16). In consummating levirate marriage, however, the act itself, even without proper intention, is sufficient. Therefore these are eligible for levirate marriage, though not for ḥălişah.

"as we have explained"—above, iv, 16; v, 18–21.

4. Yeḇ 8:6; B. Yeḇ 41b, 20b, 83b; Tos Yeḇ 11:1.

"his forbidden relative out of doubt"—see above, 1, ix, 3; and below, viii, 1.

"crushed or maimed in his privy parts"—see V, 1, xvi, 3, 9 (YJS, *16*, 106–07).

"but he must dismiss her with a ġeṭ, seeing that he may not enter the congregation"—see Deut. 23:2.

"All other brothers"—who have no blemish. This sentence goes back to the first Section, and specifies the brothers who are eligible for either levirate marriage or ḥălişah.

6. Yeḇ 14:3; B. Yeḇ 104b, 112b; Tos Yeḇ 2:5, 13:6, 11:9.

"to recite and to understand"—see above, iv, 13, 16.

"he may do so"—see above, v, 24.

7. B. Yeḇ 41b, 112b; Yeḇ 14:3; Tos Yeḇ 2:4; B. Soṭ 25b, and Rashi.

"as will be explained"—below, Sec. 10.

"lest the levir should thus happen to marry a forbidden relative"—if the ġeṭ turns out to be valid. See above, 1, i, 5.

"there is no cause here for any apprehension"—for if the betrothal is valid, she is his lawful sister-in-law and he is her lawful levir; if the betrothal is invalid, she is not bound to him by any levirate tie, and he may marry her the same as any other unrelated woman.

"a sterile woman"—one whose infertility is caused by illness or age, and is not congenital.

8. B. Yeḇ 8a, 24a, 79b, 96b, 83a, 112b; Yeḇ 8:4, 5; Tos Yeḇ 2:4.

9. Yeḇ 1:1.

10. Yeḇ 2:3, 4; B. Yeḇ 20a f., 84a.

"being subject to betrothal"—see above, 1, iv, 14. The principle here is that while these women are forbidden to the levir by reason of a disability that antedates the levirate tie, they are nevertheless subject to that tie, inasmuch as his betrothal of them, once effected, is valid. Hence his duty at the outset is to dissolve the levirate tie by submitting to ḥălişah. If he transgresses and consummates the levirate marriage by way of intercourse, he must immediately issue a ġeṭ, since continuation of this marital relationship is in any case forbidden.

11. B. Yeḇ 21a.

"widowed after her nuptials"—so that her marriage to the deceased had been consummated, and she is no longer a virgin; she is therefore unfit to marry a High Priest (Lev. 21:13–14).

"a positive commandment cannot override," etc.—the High Priest is forbidden to marry a widow by both a positive (Lev. 21:13) and a negative (Lev. 21:14) commandment; levirate marriage is ordained by a positive commandment (Deut. 25:5 ff.) only.

12. Yeḇ 10:5; B. Yeḇ 10a, 84b, 86a.

"subject neither to levirate marriage nor to ḥălişah"—since her previous marriage was incestuous, there is no levirate tie; moreover, if she is, for example, her former husband's paternal sister, she is obviously also the levir's paternal sister, equally forbidden to him.

"a co-wife"—whose marriage to the deceased was lawful, and not incestuous.

"but is not so to the levir"—for example, if the deceased had married his mother-in-law, who was forbidden to him but not to the levir.

"marry her"—the same as he would marry any woman unrelated to him, since she is not in fact legally his sister-in-law.

13. Yeḇ 9:2–3, 3:8; B. Yeḇ 84a, 11b, 41b, 91a.

"forbidden to her husband by a negative or positive commandment"—for example, if a High Priest marries a widow and then dies, and is survived by a brother who is an ordinary priest, she was forbidden to her husband by a negative commandment, but is permitted to her levir. If the High Priest marries a woman who is not a virgin, and then dies, she was forbidden to him by a positive commandment, but is permitted to the levir who is an ordinary priest.

"a forbidden relative of the second degree"—for example, if the deceased was married to his maternal grandmother, who is a forbidden relative of the second degree, and is survived by a brother by the same father, but not by the same mother; the widow is then permitted to this levir.

"a levir's divorced wife who had subsequently married his deceased brother"—the Talmud (B. Yeḇ 11b) gives a formalistic reason for this exception. Her marriage, during her ex-husband's lifetime, to this (now deceased) brother was illegal at the outset; moreover Scripture (Deut. 24:1 ff.) expressly forbids remarriage to one's divorced wife after she had been married to another man. Both disabilities have thus enough force to overcome the levirate duty and to compel the recourse to ḥălişah.

"whose status as a forbidden relative"—for example, if a man marries one of two sisters, but does not know which one he has married.

"or of her husband"—KM suggests that the correct reading is "and of her husband."

"may perform ḥălişah but not marry the levir"—on the principle that in doubtful cases ḥălişah takes precedence over levirate marriage.

"as we have explained"—above, i, 13.

14. Yeḇ 1:1; B. Yeḇ 3b, 13a.

"prohibited to the levir as a forbidden relative"—for example, if the deceased had married his niece, i.e., the levir's daughter.

"he may not rebuild," etc.—the Talmud (B. Yeḇ 3b) derives this rule by analogy of Lev. 18:18, *Thou shalt not take a woman to her sister, to be a rival* (*li-ṣĕror*) . . . *unto her* (*'aleha*). Since in Deut. 25:5, *perform the duty of a husband's brother unto her* (*'aleha*), the same expression *unto her* is used, and since *li-ṣĕror* (*to be a rival*) is a cognate of *ṣarah* (co-wife), it is concluded that if the one sister-in-law is exempt from the levirate tie, so is her co-wife. Moreover the root *ṣrr*, regarded as an emphatic form of *ṣwr*, is taken to indicate that the rule applies also by extension to the co-wife's co-wife, etc.

15. B. Yeḇ 2b.

"forbidden relative"—for example, Simeon's daughter (cf. note to preceding Section).

16. Yeḇ 2:1,2; B. Yeḇ 17b.

"noncontemporaneous brother"—see the next Section.

17. B. Yeḇ 18b.

18. "must submit to ḥălişah"—since a verbal declaration does not effect a complete marriage to the sister-in-law, the co-wife cannot be held entirely exempt; since, however, the declaration does have some effect, the co-wife cannot be held subject to levirate marriage. Hence the compromise; ḥălişah but no levirate marriage.

"as we have explained"—above, v, 2–3.

19. B. Yeḇ 11a; Soṭ 1:1; B. Soṭ 6a.

"prior to divorcing her"—he is obligated to divorce her, but dies before doing so. See above, I, xxiv, 18.

"the term 'defilement' applies to the sister-in-law"—the term is used in the case of a married woman who has played the harlot while under the authority of her husband, and also in the case of a woman who is guilty of incest. Hence it may be concluded that just as in the case of incest the woman and her co-wife are exempt from both ḥălişah and levirate marriage, so also in the case of adultery both the adulterous wife and her co-wife are likewise exempt. RABD and other later authorities, however, inclined to the view that inasmuch as there was no divorce, ḥălişah is still obligatory for the co-wife.

"before making her drink the bitter water"—see Num. 5:11–31. Since she did not drink the bitter water, and because of the death of the husband is no longer obligated to do so, the suspicion of infidelity remains unresolved; cf. below, v, ii, 7.

"who is ineligible to drink the bitter water"—see below, v, ii, 2.

20. Yeḇ 4:7; B. Yeḇ 12a f., 40b f.; Tos Yeḇ 1:1.

"forbidden relative of the second degree"—in contradistinction to the first degree relative mentioned above, in Sec. 14.

"just as the relative of the sister-in-law who had performed ḥălişah for him"—see above, i, 13.

"Because she might be confused"—Rashi (to B. Yeḇ 41a) explains that both women are likely to be present in court at the time, and if the relative's co-wife were permitted, the audience might mistakenly assume that the co-wife of the sister-in-law who had performed ḥălişah is likewise permitted, although she is certainly forbidden.

21. B. Yeḇ 2b, 12b, 13b.

22. B. Yeḇ 30b, 2b, 13a, 107b.

"doubtfully betrothed"—see above, I, ix, 22.

"doubtfully divorced"—see above, II, i, 14, 25.

"a minor . . . right of refusal"—see above, II, xi, 1. In all these cases the status of the forbidden relative, while in doubt, is nevertheless not null and void.

23. B. Giṭ 80a.

"and if subsequently the forbidden relative is found to be a barren woman"—with the result that the co-wife's second marriage turns out to have been illegal, since she is now shown to have been subject to levirate marriage (above, Sec. 21).

"to anyone else"—literally "to the street"; see above, ii, 18.

24. B. Yeḇ 14b, 92a.

"must be dismissed . . . with a geṭ"—later authorities have ruled that

no get is required, since the marriage was illegal, and that the correct reading here is "without a get."

25. B. Yeb 30a.

"and then either A or B dies"—before either one of them could marry C's widow.

"by virtue of the levirate tie"—i.e., although no levirate marriage with the second deceased brother had taken place, C's widow was nevertheless tied to him because of his obligation to marry her, so that she became in a way, though not completely, his wife's co-wife. Hence the usual compromise of ḥălişah but no levirate marriage.

"for a while"—between the moment of C's death and the moment when the second deceased brother divorced his wife (one of the two sisters). Other authorities, however, are of the opinion that so long as the second deceased brother had not actually married C's widow, the surviving levir may marry her, because her tie to the second deceased brother was only nominal during his lifetime, and is therefore even less so after his death, or in fact no longer existent.

26. B. Yeb 27b, and Alfasi *ad loc.*

"as we have explained"—above, Sec. 21.

"is known to all"—since it is forbidden by the Torah (above, Sec. 14).

"is not known to all"—being only of Rabbinic origin.

27. Yeb 3:9; B. Yeb 31b; Git 43b; Sif Deut. 25.5.

"as if she were the wife of both deceased brothers"—since the verbal declaration does not effect a complete marital acquisition (above, v, 2), she is still the wife of the first deceased brother; on the other hand, the declaration has enough effect to require a get (above, *ibid.*), hence she is, although incompletely, the wife of the second deceased brother also.

"is based on Scribal law"—otherwise people would say that two sisters-in-law from the same household may both marry the same levir. See above, i, 9, 12.

28–29. B. Yeb 32a.

28. "one must perform ḥălişah, while the other may contract levirate marriage"—which is contrary to the rule mentioned above. i, 12.

29. "submit to ḥălişah . . . or marry"—the same applies to the second widow. Since the second deceased brother has voided his declaration to the first widow, she reverts to her former status as the wife of the first deceased brother, hence the two widows represent two households, and not one and the same household. Consequently the third surviving levir may lawfully marry both of them.

30. Yeb 10:8; B. Yeb 96b.

"as we have explained"—above, v, 18.

"bound . . . to two levirs"—see above, Sec. 27.

31. B. Git 43a.

"half-slave and half-free"—see above, i, iv, 16.

"is as nothing"—hence she is in any case the relict of only one of the two deceased.

Chapter VII

1. Yeḇ 3:1; B. Yeḇ 27b.

"it is impossible for the surviving levir to marry them both"—since both are bound to him by the levirate tie, and are at the same time sisters. Should he marry A, he would be marrying the sister of B, who has the same levirate claim upon him as A, and vice versa, so that A makes B forbidden to him and vice versa.

"forbidden relative of the second degree, or is prohibited to him by a negative commandment"—see above, 1, i, 6–8.

"her sister is permitted to him"—if A, for example, is the levir's forbidden relative, she is not subject to levirate marriage; hence B alone is bound by the levirate tie to him, and the fact that B is A's sister does not affect that tie at all.

2. Yeḇ 3:3. The situation here is as follows: There are four brothers, A, B, C, and D. A's wife is, for example, the mother of C's wife, and is thus C's forbidden relative. Her sister, who is B's wife, is the mother of D's wife, and is thus forbidden to D. A and B having died—it is still assumed that it is not known which one died first—C still may not marry A's widow, and D may not marry B's widow, but C may marry B's widow, and D may marry A's widow, since there is no incestuous relationship in the latter two unions.

3. Yeḇ 3:1. From now on the sequence of deaths is known.

"also becomes subject to levirate marriage"—it is assumed that no levirate marriage has taken place in the interval between the two deaths, so that both women are subject to the levirate tie, and being sisters, make each other forbidden to the levir.

"as we have explained"—above, Sec. 1, and note thereto.

4. B. Yeḇ 27b f.

"If the second sister dies"—without performing ḥălişah.

"reverts to her status of permissibility"—as it was prior to the death of the second brother, when she alone was subject to the levirate tie. The second sister, on the other hand, became forbidden to the levir the moment she was widowed, by virtue of the first sister's antecedent widowhood. This explains the rule in Sec. 1, above, where the unknown sequence of deaths makes it impossible to determine which sister was widowed first and which was widowed last.

"if one of the brothers acts first and submits to ḥălişah"—the question may be asked, if such a ḥălişah is valid, why not rule that the second sister is subject to ḥălişah, and the first sister may then contract levirate marriage? The answer is that such a ruling might mislead the levir into believing that the reverse procedure would also be lawful, i.e., that the first sister might perform ḥălişah, and the second sister might then contract levirate marriage. See Rashi and Tosafoṭ to B. Yeḇ 27b.

5. B. Yeḇ 28a, 26a.

"that brother may marry the first sister"—since the second sister, being

his forbidden relative, is not subject to the levirate tie; this situation does not apply to the other brothers, in respect to whom both sisters are subject to the levirate tie.

"but the other brothers are forbidden to both sisters"—i.e., if the brother who has contracted levirate marriage dies also, so that the two sisters are again widows.

"as we have explained"—above, Sec. 4.

"If they act first," etc.—in the preceding Section one of the brothers acts first by submitting to ḥălişah in which no transgression is involved; the other sister therefore becomes permitted to the other brothers. Here the first brother who contracts levirate marriage has committed a transgression; he cannot therefore make levirate marriage lawful for the others by his own illegal act.

6. Yeḇ 3:5.

"and his wife also comes before C"—now both widows, being sisters, make each other forbidden to C; the verbal declaration, constituting only an imperfect act of acquisition, cannot overcome this disability.

"both give a geṭ . . . and submit to ḥălişah"—see above, v, 3.

"also submit to ḥălişah"—see above, v, 11.

7. Yeḇ 3:6.

8. Yeḇ 4:9; B. Yeḇ 41a.

"If all his brothers die"—and he is the sole surviving levir, both women, being sisters, make each other forbidden to him.

9–10. B. Yeḇ 27a.

9. 'is an imperfect ḥălişah"—since all of them are ineligible for levirate marriage, the sisters by reason of being sisters, and the co-wives as co-wives of forbidden sisters-in-law.

"as we have explained"—above, v, 12.

10. "by the sister-in-law forbidden to him"—whose ḥălişah is therefore imperfect.

"does not thereby become permitted"—on the analogy of the preceding Section. Other authorities have ruled that the co-wife does become permitted, and that there is no analogy here to Section 9.

11. Yeḇ 3:6.

"the wife of a noncontemporary brother"—see above, vi, 17. Since she was statutorily forbidden to B at the time of A's death as his wife's sister, no levirate tie came into being at that time (as in the case of the wife of a noncontemporary brother). Her subsequent marriage to C does not cancel this original disability.

12. Yeḇ 3:9, 13:6.

"because she became forbidden to him"—as his wife's sister.

"subsequently"—upon her remarriage to his late brother.

13. B. Keṯ 73b; Tos Yeḇ 13:4; B. Yeḇ 109a.

"given in marriage by her father"—which makes it a complete marriage. See above, i, iii, 11.

"she is forbidden to the levir"—and must perform ḥălişah for him.

"her divorce was complete"—see above, ii, ii, 19.

"is not a complete betrothal"—hence she retains the status of his brother's

divorced wife, and is therefore forbidden to the levir (above, vi, 7), i.e., she must perform ḥălişah. The question then arises, what need is there for ḥălişah? The answer is that having remarried her husband, the fact of her previous divorce might be forgotten, and if she then, without the formality of ḥălişah, marries another man, the public might conclude that any other widowed sister-in-law is free to marry a stranger in disregard of her levirate tie.

"as we have explained"—above, I, ix, 7, 8.

14. B. Yeḇ 109a.

"who divorces a normal woman"—and the divorce is therefore complete.

"remarries her"—and the remarriage is thus valid only by the authority of Rabbinic law. She therefore retains the forbidden status of his brother's divorced wife. See above, I, iv, 9.

"she is forbidden to the levir"—as his late brother's divorced wife.

"comes of age or regains her senses"—when her remarriage becomes complete and fully valid (above, I, iv, 8), making her again subject to the levirate tie (above, Sec. 12).

15. Yeḇ 13:7.

"to declare her refusal"—which thus becomes effective retroactively; her adult sister's prior right of levirate then becomes effective, since her marriage was complete and scripturally valid at the outset.

16. Yeḇ 14:3, 4.

"two deaf-mute brothers"—in all these cases the validity of the marriage is based only on Rabbinic law, hence the sisters have equal status. Cf. above, I, iv, 9.

17. Yeḇ 14:4.

"the deaf-mute must dismiss his wife"—by way of an appropriate gesture (above, II, ii, 17).

"forbidden forever"—since her deaf-mute levir can neither marry her nor submit to ḥălişah by her (above, iv, 13); hence she can never be made free to marry another man. Her only remedy is to await the deaf-mute's death.

18. B. Yeḇ 114a f.

"minors who eat of nĕḇelah"—see V, II, xvii, 27 (YJS, *16*, 254).

"as the sister of the levir's wife"—without realizing that the deaf-mute's own marriage is an incomplete marriage.

19. Yeḇ 14:4; cf. above, Sec. 17.

20–21. P. Yeḇ 14:4, 5.

20. "exempt"—from both ḥălişah and levirate marriage.

"equally invalid"—hence there is no levirate tie at all, and the co-wife has the status of an unrelated woman.

21. "a similar close relative"—for example, his mother-in-law or his daughter-in-law.

"is not a complete marriage"—whereas the marriage of the co-wife, who is normal, is complete. Hence the levirate tie takes effect upon the co-wife, and must be dissolved by way of ḥălişah; she may not marry the levir, however, since she is the co-wife of his forbidden relative.

Chapter VIII

1. Yeḇ 2:6.

"but does not know which one"—how this could happen is shown above, I, ix, 3.

"that brother must submit to ḥălişah"—he may not marry either sister-in-law, since her sister may be the real widow, in which case he will have married the sister of the woman bound to him by levirate tie.

"they need not be made to dismiss them"—although the first levir has acted illegally, this illegality is removed by the marriage of the second levir, especially since the illegality is subject to doubt, inasmuch as the first levir may have married his true sister-in-law.

2. Yeḇ 2:7; B. Yeḇ 23b f.

"two men"—unrelated to each other.

3. B. Yeḇ 23b.

"A's other brother may marry the sister," etc.—since she is then certainly permitted to him: if she is A's widow, she is bound to him by levirate tie; if she is not A's but B's widow, she is, after she has performed ḥălişah for one of her levirs, free to marry a stranger, and A's other brother is certainly a stranger to her in that respect.

"If the two brothers of A . . . submit to ḥălişah by both sisters"—in that case neither one of A's brothers may marry the other sister, since she is the sister of the widow who had performed ḥălişah for him. The reading "If the two brothers" is that of the Yemenite MSS; the printed text reads, less clearly, "If both of them."

"may not both contract levirate marriage"—since each one may be marrying the sister of the widow bound to him by levirate tie. Once, however, his brother submits to ḥălişah by one of the sisters, the other sister is certainly permitted to him: if she is B's widow, she is bound to him by levirate tie; if she is not B's but A's widow, she is no longer the sister of the widow bound to him by levirate tie, since his brother had released the widow from that tie by having submitted to ḥălişah by her.

4–5. Yeḇ 11:4.

4. "and therefore his forbidden relative"—see Lev. 18:14.

6. Yeḇ 11:6; B. Yeḇ 41a, 43a; P. Yeḇ 4:11.

"without waiting for three months"—see above, II, xi, 18.

"the widow of his maternal brother is . . . prohibited"—levirate marriage, being an exception from the general prohibition of one's brother's wife (Lev. 18:16), applies only to a brother by the same father, and not to one by the same mother (above, I, 7).

7–8. B. Yeḇ 100b.

7. "there is no brotherhood between them whatsoever"—neither on the father's side nor on the mother's.

8. "assured sons"—this is a continuation of the case in the preceding Section. In addition to the doubtful son, each husband has a son by another wife. If the doubtful son is the son of the first husband, he is the paternal

brother of the other son of the first husband, and no blood relative of the second husband's son; if he is the son of the second husband, he is the paternal brother of his other son, and no relation to the son of the first husband.

9. Yeḇ 10:1; B. Yeḇ 87b, 91a.

"the first husband returns"—see above, II, x, 5, where both husbands are required to divorce her, and are forbidden to remarry her.

"and may not contract levirate marriage"—the first husband's brother must submit to ḥălişah because his brother was her lawful husband, but may not contract levirate marriage with her as a penalty against the widow for her failure to verify the rumor. The second husband's brother must submit to ḥălişah by authority of Rabbinic law only, as a precaution, lest people who are unaware of the fact that the rumor about the first husband's death was false, should conclude that a widow may remarry without first performing ḥălişah.

10. Yeḇ 11:3.

11. "and all four of them have already submitted to ḥălişah"—and thus the fifth son has married a woman both exempt from levirate marriage and not related to him.

TREATISE IV: LAWS CONCERNING A VIRGIN MAIDEN

Chapter I

1. Keṯ 3:1; Beḵ 8:7.

"a virgin"—for a definition of this term see below, Sec. 8.

"refined silver"—clear of any base alloy; cf. above, I, x, 8.

2. B. Keṯ 39a f.

"and is subject"—the Yemenite MSS read "and he is subject."

3. Keṯ 3:4, 5; B. Keṯ 39b.

"he may not be compelled to consummate the marriage"—this conclusion is drawn from the wording of Exod. 22:15, *And if a man entice a virgin . . . he shall surely pay a dowry for her to be his wife.* The phrase *he shall surely pay* is understood to mean of his free will, not by being compelled to do so.

"they may do so"—the right of the violated woman to refuse to marry her violator is deduced from the verse quoted hereinafter, *she shall be his wife,* which is understood to mean, if she is willing to be his wife.

"he must be compelled to consummate the marriage"—the Mishnah (Keṯ 3:4) puts it in the form of a proverb, "the violator must drink out of his pot", or, in a more familiar figure of speech, "he made his bed, let him lie in it ever after."

4. B. Keṯ 39b; cf. above, I, x, 7.

5. Keṯ 3:5.

"even if only by a positive commandment"—see above, I, i, 8.

"or even if she is only his forbidden relative of the second degree"—with whom marriage is forbidden by Rabbinic law only; see above, I, i, 6.

"fit to be his wife"—meaning a wife who is fit to be retained as his mate, which excludes an adulterous woman (above, I, xxiv, 17). The misconduct, however, must have occurred after the marriage; if it has occurred before the marriage, the prohibition of divorce remains in force.

6. B. Yeḇ 59b. Cf. V, I, xvii, 16 (YJS, *16*, 111).

"he is commanded to marry a virgin"—see Lev. 21:13, and above, I, i, 8.

7. B. Mak 15b.

"a negative commandment transformed into a positive commandment"—i.e., the transgression of the negative commandment can be rectified by the performance of the respective positive commandment. Hence the transgression is really the failure to perform the positive act, and for such a transgression one is liable to a flogging.

"the Laws Concerning the Sanhedrin"—XIV, I, xviii, 2 (YJS, *3*, 50–51).

8. B. Keṯ 40b, 48b; Sanh 73b, 41a.

"in a normal manner"—so as to cause the loss of her virginity. Other authorities prescribe a fine even for abnormal intercourse.

"before witnesses"—see below, ii, 12.

"three full years"—see above, I, iii, 11.

"no warning is necessary"—since a formal warning is required only where the penalty is death or lashes (B. Sanh 41a).

"And whether the girl has a father," etc.—in the Yemenite MSS and the early editions this sentence concludes Sec. 8. In later editions it opens Sec. 9.

9. Keṯ 3:2, 3; B. Keṯ 40a, 36a f., 38a.

"a girl who has exercised her right of refusal"—an orphaned girl who was given in marriage by her mother or her brother (above, II, xi, 1 ff.), and who leaves her husband by virtue of this right, is not entitled to the fine, because she is presumed to be no longer a virgin.

"a barren woman"—see above, I, ii, 5.

"an imbecile, a deaf-mute"—because of their mental condition there can be no claim as to their virginity. See above, I, xi, 4, 8.

"a woman . . . divorced after marriage"—a married woman is presumed to be a nonvirgin, even if she is in fact still a virgin. See above, I, xi, 1.

"the fine accrues to herself"—not to her father, since her betrothal has removed her from his authority.

"she is not entitled to the fine"—because she had consented.

10. Keṯ 3:2; B. Keṯ 36b.

"they are accounted nonvirgins"—because their virginity is in doubt.

11. B. Keṯ 31b ff.; Mak 13b; Sanh 41a.

"on penalty of excision"—see above, I, i, 5.

"forbidden by a negative commandment"—and on penalty of lashes. See above, I, i, 7.

12. B. Keṯ 35b f.

"If she is forbidden," etc.—see above, I, i, 8, for those forbidden by a positive commandment; and I, i, 6, for forbidden relatives of the second degree.

13. Yeḇ 3:2; B. Yeḇ 35a, 36b, 38a.

"on penalty of death at the hands of the court"—see XIV, 1, xiv, 1 (YJS, 3, 39).

14. B. Keṯ 35a.

15. B. Keṯ 29b, 41b, 38b.

"and she then dies"—of some cause other than her ravishment; otherwise he is guilty of willful murder.

"before she appears in court"—because as soon as they appear in court he is liable for the fine.

Chapter II

1–2. Keṯ 3:4; B. Keṯ 40b, 39b.

1. "the blemish . . . the pain"—see below, Sec. 6.

"pained her"—the common translation is "humbled her." When speaking of the seduced virgin (Exod. 22:15–16), Scripture does not mention pain.

3. Keṯ 3:7; Ar 3:4.

"The fine is the same for all women"—since the amount of it is specified in the Torah.

"with the daughter of a bastard"—the Yemenite MSS read "with a female bastard."

4–6. Keṯ 3:7; B. Keṯ 40a f.; BḲ 83b, and Rashi *ad loc.* The meaner the aggressor, the greater the humiliation; see XI, IV, 3, 1 (YJS, 9, 169).

6. "to his slave"—who is giving him faithful and devoted service, and whom he wishes to reward with a *virgo intacta.*

7. Keṯ 3:4; B. Keṯ 39b.

"wishes to be divorced"—the only way in her case in which a divorce is possible, since her husband may never divorce her against her will (above, i, 3).

"she has no claim to anything"—since she has no kĕṯubbah (above, i, 4); the violator's punitive payments take the place of her kĕṯubbah.

8. B. Keṯ 40b.

"unnaturally"—when no fine is required (above, i, 8).

"and the other penalties"—including compulsory marriage (above, i, 3).

"is not the same"—since even unnatural intercourse causes some depreciation of the girl's value; hence in that case the compensation must be lower than for a *virgo intacta.*

9–10. Soṭ 4:3.

9. "we have already enumerated"—above, i, 9–10.

10. "is not entitled"—later authorities deny this connection between the fine and the other penalties, and maintain that the latter remain in force in any case.

11. P. Soṭ 4:4, B. Keṯ 32a.

"he must pay only for the pain"—in the case of an imbecile and a deaf-mute there is no humiliation or blemish—the imbecile is unable to comprehend humiliation, and neither one has a market value.

"he is exempt from any payment whatsoever"—in seduction no pain is

involved, since the seduced is presumed to have consented. Hence in the case of the deaf-mute and the imbecile, who are not entitled to compensation for the humiliation and the blemish either, there is no payment at all. In the case of the girl who has come of age and the one who has declared her refusal, they are not entitled to any compensation because they had knowingly consented. Nor are their parents entitled to compensation, since the girl who has come of age is no longer under the authority of her father, and the one who has declared her refusal has no father.

12. Ket. 3:9; B. Ket. 41a; BK. 64b.

"A man may not . . . pay the fine"—a fine is an additional penalty imposed by the court for the commission of a wrong. The culprit's own admission of guilt removes the stain of the wrong. Where, however, money is to be paid for tangible value, admission of guilt is not enough—payment must also be made.

"he must submit to an informal oath"—the rule is that an informal oath is imposed only where an admission of the charge would have obligated the defendant to make a monetary payment.

13. "You violated me"—and therefore are liable to pay also for the pain.

"I only seduced you"—and therefore I need not pay for the pain.

"an oath authorized by the Torah"—such an oath is prescribed where the accused has made a partial admission of the charge against him. In this case he has done so.

"as will be explained"—see XIII, IV, i, 1 (YJS, *2*, 190).

14–15. B. Ket. 41b.

16. Ket. 3:3; B. Ket. 38a, 39a.

"espoused and then divorced"—if she is not divorced, the penalty for the man is death.

"only the fine"—the other penalties are payable to her father, inasmuch as she is not yet completely on her own.

"If she is violated or seduced"—while yet unmarried.

17. B. Sanh 76a; Yeb. 37b; Ket. 36b.

"as we have explained"—above, i, 9.

Chapter III

1. B. Ket. 45b f., 44b; Sanh 54a; Bek. 8:7.

"If a man issues an evil report"—for a definition of an evil report see below, Sec. 6.

"he had already been warned"—so that no individual preliminary warning is required.

2. B. Ket. 44b, 97b; Yeb. 59a.

"the term *damsel* being here spelled in full"—the Hebrew word for "damsel, maiden," *na'ărah,* is spelled throughout the Pentateuch (with only one exception, Deut. 22:19) defectively, without the ending *ah,* so that it is indistinguishable from *na'ar,* "lad, boy." The Talmud (B. Ket. 44b) does

indeed refer to Deut. 22:19 as its proof-verse for this rule. The spelling in full is thus taken to be meant for emphasis, to exclude a minor girl and one who has come of age.

3. Sanh 1:1; B. AZ 8b.

"the court of twenty-three judges"—which is authorized to try capital cases; the three-men court is not so authorized.

"to be put to death"—see Deut. 22:20–21.

"at all times"—i.e., not only when the Temple is in existence.

"as will be explained"—see XIV, 1, v, 2–4 (YJS, *3*, 17).

4. "as we have explained"—above, i, 7.

5. B. Ket̲ 40a; Sif Deut. 22:19.

"both . . . commandments would be fulfilled"—i.e., since he was willing to retain her, he has fulfilled the positive commandment; and since she refused to abide with him, so that he had to divorce her, he has fulfilled the negative commandment.

6. B. Ket̲ 46a; P. Ket̲ 4:4.

"witnesses in refutation"—this is a type of witnesses designated in the Talmud as *'ed̲im zomĕmim*, i.e., a second set of witnesses who refute the first set of witnesses by saying that their testimony cannot be true, because at the time when, according to their testimony, the transgression was committed, they were all in another place and could not have seen the accused *in flagrante delicto*.

7. B. Ket̲ 45a f.

"he is exempt . . . she is liable to death"—in each case what is taken into consideration is the cause of the punishment. In his case, it is his words, after she has come of age; in her case, it is her misconduct, which has taken place when she was still a maiden.

8. Ket̲ 4:3; B. Ket̲ 44b.

"any maiden," etc.—see above, i, 9.

"is not entitled to the fine"—since such girls are presumed to be non-virgins.

"conceived in unholiness but . . . born in holiness"—while still a heathen and after conversion to Judaism, respectively.

"less than three years old"—when intercourse is legally invalid and she is presumed to be a virgin (above, 1, xi, 3).

9. B. Ket̲ 46a; P. Ket̲ 4:4.

"he is exempt"—the question of his exemption is brought up in the Talmud, but is left unanswered. The rule, however, is that when a doubtful case involves only payment of money, the decision is on the lenient side.

10–12. B. Ket̲ 45b, 46a, 46b.

11. "without adding," etc.—in which case she may have played the harlot prior to her espousal, and would then be guilty of nothing more than fraud.

12. "a euphemism"—in other words, Scripture does not actually mean that the bed linen should be exhibited in public for the presence or absence of bloodstains.

"the Torah has already declared"—Deut. 22:29.

TREATISE V: LAWS CONCERNING THE WAYWARD WOMAN

Chapter I

1. Soṭ 1:1; B. Soṭ 24a, 26a f.; P. Soṭ 1:1.

"Jealousy"—a wife thus suspected of infidelity is designated "wayward" (*soṭah*), from the root signifying "to stray, to deviate." Curiously enough, the Yemenite MSS spell the word *śoṭah,* as if it were derived from the root signifying "to be seized with madness, to be mentally unbalanced."

"an impotent male"—even though intercourse with such a male does not constitute valid sexual union (V, 1, i, 11; YJS, *16,* 12).

2. B. Soṭ 2b, 4a.

"she being secluded"—in the usual translation, this phrase (represented in Hebrew by a single word) is connected with the following phrase, and the whole is rendered *she being defiled secretly.*

"whereby she tarries"—so the early editions; later editions have "or if she tarries," an obvious misprint.

"to suffer defilement"—i.e., to have intercourse.

"the water of bitterness"—see below, iii, 10.

"In the time when there is no water of the wayward woman"—i.e., after the destruction of the Temple in Jerusalem; see below, iii, 1.

3. P. Soṭ 1:2.

"against two men"—although a woman is otherwise permitted to seclude herself with two men of good repute. See B. Kiḍ 80b.

"even if both men are her brothers," etc.—according to some authorities, a man may seclude himself with his sister or his daughter.

"she is forbidden to her husband"—since the husband clearly resents it, she should not go into seclusion with them, for he may have some valid grounds for questioning their moral uprightness.

4. Soṭ 1:2; B. Keṭ 5b, 9a.

"warning"—literally (here and further on) "jealousy."

5. B. Keṭ 9a; Ḳid 81a.

6. B. Soṭ 26b f.; Soṭ 4:4.

"a minor less than nine years and one day old"—whose intercourse is invalid (above, II, xi, 3).

"animal"—an act of bestiality does not render a woman a "harlot" (V, 1, xviii, 1; YJS, *16,* 113), although it makes her liable to the death penalty.

7. B. Soṭ 25a; P. Soṭ 2:6; Soṭ 4:2.

8. B. Soṭ 2a, 28a, 6b, 31a.

"spin by the light of the moon"—today we would say "have gathered together for a spinning bee."

"is forbidden to retain her"—and may not subject her to the bitter water ordeal, since her misstep is now common knowledge and needs no testing. He must pay her her kĕṭubbah, however, because she can counterclaim that he should have subjected her to the ordeal. KM remarks that in this case it is understood that there is only one witness, and not the statutory two, to

her seclusion, since otherwise her unfaithfulness would have been regarded as proven and she would have forfeited her kĕṯubbah. The common gossip, however, in addition to the testimony of the sole witness, is effective enough to make her forbidden to her husband and to compel him to divorce her, but not effective enough to penalize her with the loss of her kĕṯubbah. See the next Section.

9. B. Ḳid 66a; Soṭ 2a.

10. B. Soṭ 24a, 27a; Soṭ 4:5.

"by the court"—in the husband's absence or incapacity, and on the basis of information derogatory to the wife's reputation. See the next Section.

"not to the extent of making her drink of the water"—since Scripture says (Num. 5:15), *then shall the man bring his wife unto the priest,* which makes the ordeal by water the prerogative of the husband alone.

11–13. B. Kiḏ 18b f.

12. "is cleared"—see below, iii, 21.

"may not make her drink of the water a second time"—this is deduced from the Scriptural statement, *This is the law of jealousy* (Num. 5:29), the term *this* being interpreted as meaning that this one ordeal is final for those particular parties involved, and may not be repeated, unless a new party enters the case.

13. "inasmuch as he is the second husband"—and therefore his case is not analogous to the one in Sec. 12.

"And it cannot be said"—that the repeated suspicion of her involvement with the same alleged paramour may now be regarded as presumptive evidence of the truth of the charge, and that no further evidence is needed; on the contrary, at least one witness to the misconduct is necessary, and even his testimony does not confirm the charge, but merely establishes the fact that evidence, even though insufficient, does exist.

14. Soṭ 6:1; B. Soṭ 31a.

"in his presence"—not to be taken literally. See V, 1, i, 19 (YJS, *16,* 15).

"and need not drink"—since the ordeal serves to resolve a doubt, and in this case the eyewitness to the act itself has already resolved it.

"even if the witness to the defilement is also one of the witnesses to the seclusion"—and it cannot be said that the silence of the other witness signifies contradiction.

"no witness"—the rule is that whenever Scripture says "witness," the word, even though singular, denotes the statutory two witnesses, unless Scripture says expressly "one witness" (B. Soṭ 31b). The testimony of this sole eyewitness is fully effective in this case, because it is supported by the testimony to the seclusion by the two statutory witnesses; it is not therefore a case of conviction on the testimony of only one witness, which is illegal.

15. Soṭ 6:2; B. Soṭ 31a; RH 22a.

"for a transgression against Scribal law"—see above, I, ix, 6; and XIV, II, x, 3 (YJS, *3,* 103).

"need not drink of the water"—because she must drink of it only when her guilt is in doubt for lack of testimony.

"the five women"—see above, II, xii, 16. Normally their testimony is invalid if it would harm the accused. Hence their testimony is credited where

it does no harm, i.e., where it exempts her from drinking of the water, and is not credited where it would do harm, i.e., where it would deprive her of her kĕṯubbah. This seemingly illogical position makes sense if one reflects that once these women realize that their testimony cannot do any harm, they are not likely to resort to false testimony.

16–20. B. Soṭ 31b f.

16. "as we have explained"—above, Sec. 14.

17–18. In each case the witnesses cancel each other's testimony, so that her defilement remains in doubt.

19. "she need not drink"—because of the principle that where the testimony of one witness is sufficient the decision follows the majority.

20. "as we have explained"—above, Sec. 14.

Chapter II

1. Soṭ 3:3, 4:2; B. Soṭ 24a, 19b f.

"she may . . . say, 'Yes, I was defiled' "—the principle being that the water is administered only when her misconduct is in doubt. Here there is no longer any doubt.

"but I will not drink"—she says it either because it is a lie and she is in fact guilty of misconduct, or because she is skeptical of the ordeal and is afraid that it might show her guilty even if she is innocent. In general the ordeal by water was held in great awe (cf. below, iii, 2), and every effort was made to avoid it, either by inducing the woman to confess, or else by dissolving the marriage with or without forfeiture of the kĕṯubbah, and thus dismissing the charge as "not proven."

"or if he has intercourse with her"—which is illegal. In such a case the ordeal by water is useless. See below, Sec. 8.

"but may claim her kĕṯubbah"—his rejection of the ordeal casts further doubt on her guilt, hence there is no reason to penalize her with forfeiture of her kĕṯubbah.

2. Soṭ 4:2–4.

3. Soṭ 23b, 27a; Sif Zuṭa Lev. 21.

"wife"—the Hebrew word, *'iššah,* signifies both "wife" and "woman."

"husband"—the Hebrew word, *'iš,* signifies both husband" and "man."

"shall cause the woman to stand"—usually translated *shall set the woman.*

4. B. Keṯ 9a; P. Soṭ 2:1; B. Niḏ 52a.

"whose father had given her in marriage"—her marriage is fully valid by authority of the Torah, and she therefore does not have the right of refusal. See V, 1, iii, 2 (YJS, *16,* 21).

"not to the extent of making her drink of the water"—since as a minor she is not eligible. See above, Sec. 2.

"as we have explained"—above, Sec 2., See also V, 1, xviii, 11–12 (YJS, *16,* 116).

"she can have no deliberate intention to become forbidden to her husband"—since she can easily dissolve her marriage by her declaration of refusal, so that there is no reason for her to commit deliberate adultery in order to free herself from her husband.

"even if her husband is a priest"—whose wife otherwise becomes forbidden to him, even if she has been the victim of rape (V, I, xviii, 7; YJS, *16*, 115).

5–6. B. Soṭ 24b, 26a.

5. "after his marriage to her"—that is, after her marriage to her espoused husband or her levir, respectively.

"before her husband had intercourse with her"—i.e., the wedding ceremony which makes it a fully valid union has already taken place, but he has not yet consummated the marriage. All this applies only to the ordeal by water; the wife becomes forbidden to her husband in any case.

6. "all these, being permitted to their husbands"—see V, I, xii, 17; xv, 7; xvi, 9, 12 (YJS, *16*, 84, 98–99, 107–08).

7. B. Soṭ 26a; Soṭ 4:2.

"in her present condition"—even though the water may hurt the child. Tosafoṭ *ad loc., s.v. mĕ'ubberet,* maintains that the ordeal should be delayed until after the child is born.

"she need not drink, but neither is she entitled to her kĕṯubbah"—the ordeal cannot take place in the husband's absence, since Scripture demands that *then shall the man bring his wife unto the priest* (Num. 5:15); the suspicion of unfaithfulness thus remains, and causes the forfeiture of her kĕṯubbah.

8. B. Soṭ 28a.

"which is forbidden only by Scribal law"—above, I, x, i.

9. Soṭ 4:3; B. Soṭ 23b.

"Therefore"—the women mentioned here are also forbidden only by Scribal law.

"transgresses and marries another man's pregnant or nursing wife"—whose husband has died, and who is forbidden to remarry until the period of nursing is over. See II, xi, 25.

"there is really no transgression involved here"—i.e., such a marriage is forbidden not because it is in itself illegal, but merely in order to protect the health of the child (see II, xi, 25). Hence if the husband separates himself from the woman until the expiration of the statutory period of lactation (24 months), he may lawfully resume the marriage.

10. Soṭ 4:3; B. Soṭ 24a; P. Soṭ 4:3.

"nor children"—by another wife.

"marries a sterile, aged, or barren woman"—see above, I, xv, 7. When a man has neither children nor another wife capable of childbearing, he may not marry such a woman. If he does have children, or has another wife capable of childbearing, he may marry such an unfruitful wife. Hence in the latter case she is liable to drink of the water, like any other lawfully wedded wife.

11. P. Soṭ 4:4.

"by his divorced wife"—i.e., his previous wife did not die but was divorced.

12. Soṭ 5:1; B. Soṭ 28b, 6a, 9a; Yeḇ 92a, 24b; Yeḇ 2:8. See above, Secs. 1–2, 10–11; and i, 14.

"just as she is forbidden to her husband, so is she forbidden to the other man"—the Talmud (B. Soṭ 9a) puts it in the form of a proverb: "Whosoever

sets his eyes on that which is not his, what he seeks, he is not given, and what he has, is taken away from him."

13. B. Yeḇ 24b. Cf. above, 1, xxiv, 15.

"If she has children"—whose status would be jeopardized by her dismissal.

14. B. Yeḇ 25a; Ḳid 66a.

"murmur"—the Yemenite MSS and the *editio princeps* read "are thrown into confusion."

"out of fear"—of revenge on his or her part.

15. B. Yeḇ 24b.

"even if she has no children"—see above, Secs. 13–14. Her second marriage is presumed to have silenced the gossip.

16. B. Yeḇ 24b; P. Keṯ 7:6.

Chapter III

1–2. Soṭ 1:3–6; B. Soṭ 7a f.

1. "she is forbidden to him"—see above, i, 2.

2. Soṭ 1:3–6; B. Soṭ 7b; Shab 55b.

"the Great Name . . . would be blotted out"—see below, Secs. 8, 10.

"the story of Judah and Tamar"—Gen. 38.

"the story of Reuben and his father's concubine"—Gen. 35:22.

"according to its literal interpretation"—some interpreted the story metaphorically, in the sense that Reuben had merely transferred his father's couch from the concubine's tent to his mother's (Leah's) tent, as a reproach to Jacob's neglect of Leah (B. Shab 55b).

3–6. B. Soṭ 7a, 8a.

3. "to the East gate," etc.—for the location of the various parts of the Temple compound see YJS, *12*, plan facing p. 498. The Great Court sat in the Chamber of Hewn Stone, at the center of the Northern side of the Sanctuary. The East Gate opened on the women's section of the Temple Court. The Holy of Holies stood at the Western extreme of the compound, looking toward the East. The Court was in three sections, women's, commoners', and priests', the commoners' section 15 steps higher than the women's, and the priests' section 4 steps higher than the commoners' (YJS, *12*, 25).

6. "her resolution"—to persist in her plea of innocence and refuse to confess.

7. Soṭ 7:1; B. Soṭ 17a, 32b, 28a, 9b; Shebu 36a.

"in order to forestall discredit of the efficacy of the water"—in the Scriptural verses just cited the thigh is mentioned first and the belly last, corresponding to the order in which the sin of adultery is committed. Had the effect of the water followed the same order, people might assume that the effect was caused not by the water, but by the Scriptural curse. Hence the priest's announcement that the effect will follow the order of the water's penetration into the woman's body, first into the belly, and then into the thigh.

8. Soṭ 2:4; P. Soṭ 2:4; Soṭ 2:3; B. Yoma 37a; Tos Soṭ 2:1; Tos Giṭ 2:10 (ed. Zuckermandel, 2:7); B. Soṭ 20a.

"free of vitriol"—which makes the ink permanent; see below, iv, 9.

"as it is written"—that is *YHWH,* and not as it is pronounced, *'Ādonay.*

9. Soṭ 2:2; B. Soṭ 15b, 9a; Men 88a.

"that it looked worn out"—the requirement that the vessel be new, i.e., unused, is Maimonides' own interpretation of B. Soṭ 15b, which requires only that a vessel blackened by use be refired in the kiln to restore its original appearance.

"laver"—see Exod. 30:18–19.

"Temple Hall"—that is, the Holy Place, which formed the vestibule or forechamber to the Holy of Holies; see YJS, *12,* plan facing p. 498.

10. Soṭ 2:2; B. Soṭ 20a, 19a, 20b, 19b.

11. Soṭ 1:5; B. Soṭ 7a ff.; P. Soṭ 1:6.

"one of the priests of the Temple Court"—Tos Soṭ 1:5 states that this priest was chosen by lot, as a precaution against lasciviousness.

"Egyptian rope"—made out of palm-tree fibers.

"Egyptian doing"—the Egyptians were considered to have particularly low moral standards; cf. Lev. 18:3.

"that she had committed"—meaning, that she stands accused of committing.

12. Soṭ 2:1; P. Soṭ 2:1, 1:8; B. Soṭ 14a.

"the residue of the Chamber"—the annual collection of shekel dues was deposited in the Temple Treasury, and three large baskets were filled with the coins and used as the heave offering in the Temple. The remainder of coins, called "the residue of the Chamber," was used for other Temple purposes. See III, vii, ii, 4 (YJS, *14,* 414).

"Egyptian basket"—made out of palm-tree fibers.

13. Soṭ 2:1; Men 5:4; Sif Num. 5:15.

"vessel of ministry"—a vessel regularly used in the Temple service.

"without adding to it oil or frankincense"—as was usually done for meal offerings. These are here omitted, in order to emphasize the baseness of her alleged transgression.

'for it is said"—a separate commandment for the oil, and likewise for the frankincense.

14. Soṭ 3:1; B. Soṭ 19a f.

15. Soṭ 3:1; B. Soṭ 14b; Men 5:6; B. Men 60b; Suk 37b.

"as was done in all waving"—see VIII, v, ix, 6 (YJS, *12,* 198).

"back and forth"—towards the four points of the compass.

"as was done with all meal offerings"—see VIII, v, xii, 9; xiii, 12 (YJS, *12,* 213, 218–19).

16. Soṭ 3:4; B. Soṭ 20b, 9b; Kel 1:8.

"lest her menstrual blood should start flowing"—involuntarily, out of her mortal fear and terror at her condemnation.

"menstruating women would cause the women's section of the Temple Court to become unclean"—see VIII, i, vii, 15 (YJS, *12,* 33).

"and finally she died"—cf. below, Sec. 20.

17. Soṭ 5:1; B. Soṭ 28a.

"as we have explained"—above, ii, 8.

18. B. Soṭ 47b.

19. Soṭ 9:9.

20. Soṭ 3:4; B. Soṭ 21a; P. Soṭ 3:4.

"has earned the merit of studying the Torah"—not necessarily by studying herself (since a woman is not obligated to do so; see I, III, i, 1), but also by causing her sons to study, or making it possible for her husband to devote himself to study.

21–22. B. Soṭ 26a.

22. P. Soṭ 3:4.

23. B. Soṭ 6a, 31b.

24. B. Soṭ 26b, 28a; P. Soṭ 4:4; B. Keṭ 51b; Sif Zuṭa Num. 5:27.

"unwittingly"—which is akin to duress; cf. above, I, xxiv, 20.

"bodily contact"—without sexual union.

"carnally"—literally "with a lying of seed," which cannot apply to mere fondling.

Chapter IV

1. Shek 1:1; P. MḲ 1:2.

"Adar"—which is the last month of the civil year.

"to be subjected to a warning"—by the court; see above, i, 10–11.

"to cause them to drink of it"—upon request by their husbands, since the court itself has no authority to initiate the ordeal; see above, i, 10.

"at any time"—and not only on the fifteenth of Adar and thereafter.

2. Meğ 2:5; B. Soṭ 8a; Neḏ 73a; Tos Soṭ 1:6.

"And the priest shall bring her near, and set her before the Lord"—the text has *And the priest shall set her.* The singular *her* is taken as limiting the procedure to one woman at a time.

3. B. Soṭ 19b f.

"out of fear and dread"—even if in fact innocent of misconduct.

4. Soṭ 3:3; P. Soṭ 3:3.

"was blotted out"—above, iii, 10.

"was hidden away"—like any other sacred writing that has become unfit for use. According to P. Soṭ 3:3, the Scroll was placed under the pivot of the Temple Hall door, so that the writing might be erased by the repeated turning of the pivot.

"unfit for use for another wayward woman"—since the scroll, like a geṭ, had to bear the name of the particular woman (above, iii, 8).

"the ash heap"—of hallowed things that had become unfit and were burned; it was located in the Temple Court (VIII, v, vii, 3; YJS, *12,* 189). The woman's meal offering was thus likewise burned and its ashes added to the heap.

"they chided her"—Rashi (to B. Soṭ 19b) interprets the verb as "pried her mouth open."

5. Soṭ 1:4; B. Soṭ 7b.

"certainty"—or "innocence." Once the scroll has been blotted, the ordeal must go on to its final step, and her innocence or guilt must be demonstrated beyond any doubt.

6. Soṭ 3:3; B. Soṭ 20a.

"there was no more holiness in it"—there being no longer any doubt of her guilt, the water was no longer holy as the active component of the ordeal.

7–8. B. Soṭ 17b.

7. "for it is said"—the Talmudic source cites a different proof-verse.

"just as her offering must take place in daytime"—see VIII, v, iv, 1 (YJS, *12*, 175).

"in reverse order"—the last part of the curse (Num. 5:21–22) first, and the first part (Num. 5:19–20) last.

8. "in the manner of a letter"—without first ruling the parchment with a stylus. Such preliminary ruling, to make the writing even, was required for Scrolls of Scripture.

"in a scroll"—literally "in a book (*sefer*)," which usually consisted of only one strip of parchment, unlike Scrolls of Scripture which consisted of several strips sewn together.

"unfinished skin"—salted and sprinkled with flour, but not yet tanned with gallnut.

"a book scroll"—of finished parchment.

9. Soṭ 2:4; Sif Lev. 5:23.

"And the priest shall write"—the word *priest* excludes an Israelite commoner, and the words *shall write* imply one capable of knowing what he is doing, whereas a minor does not know what he is doing. See above, II, iii, 16.

10–11. B. Soṭ 19b, 18a.

11. "vessel"—literally "cup."

"the act was valid"—because in both cases it remained doubtful whether each woman's drink had blotted out only her own scroll, or part of her scroll and part of the other woman's scroll. Once they did drink, they were given the benefit of the doubt.

12–13. P. Soṭ 2:2; B. Soṭ 16b.

13. *"on the floor"*—meaning on the surface, and not deeper in the ground.

14. Soṭ 3:2, 3:6; P. Soṭ 3:6; B. Soṭ 6b, 22b f.; Zeḇ 87a.

"the priest offered up her meal offering first"—even though she had to drink the water first; see above, iii, 15. The act was valid nevertheless, because in Num. 5:26 the offering of the meal is mentioned first.

"like all meal offerings"—see VIII, IV, v, 5 (YJS, *12*, 150).

"if before the prescribed handful was taken," etc.—see Num. 5:26; in all these instances she was not required to drink the water (see above, ii, 1), and therefore the meal offering was no longer necessary.

"might not be consumed"—variant reading, "might be consumed"; the latter variant agrees with the opinions of other authorities; cf. the next Section.

15. Soṭ 3:6; B. Soṭ 6b.

"inasmuch as he had a share in it"—and therefore might not eat of it. See Lev. 6:16.

"like the offerings of the male members of the priesthood"—see *ibid.*

"were found to be false"—see above, IV, iii, 6, and note thereto.

"became profane"—and required no redemption, since the disqualification of the hostile witnesses rendered the charge null and void, and the offering erroneous.

16. Sif Zuṭa to Num. 5:25; B. Ker 9b.

"jealousies"—usually translated in the singular, "jealousy," but the Hebrew word is in the plural form.

17. Soṭ 2:5–6; B. Soṭ 18b.

"subsume in her oath"—there are matters which in themselves require no oath. If, however, they come up in conjunction with a matter where an oath is prescribed, the plaintiff may demand that they be included in that oath. See XIII, IV, i, 12 (YJS, 2, 194).

"while she was espoused to him"—and was not subject to the ordeal by water (above, ii, 2).

18. B. Soṭ 3a; P. Soṭ 1:1.

"and he be jealous of his wife"—which is interpreted as making it his duty to warn her if her conduct gives rise to the slightest suspicion.

"is moved thereto by the spirit of purity"—meaning, by his earnest concern for her moral perfection, which prompts him to warn her of the turpitude and grave consequences of misconduct.

19. B. Soṭ 2b.

"and shalt not sin"—this interpretation seems to be required by the foregoing "is himself a sinner"; the usual translation is "and shalt miss nothing."

GLOSSARY

'Ăgunah
a woman whose husband's whereabouts are unknown, and who cannot remarry as long as there is no evidence of his death

'Asmaḵta (literally "reliance")
a statement by a debtor that if, upon paying part of his debt, he does not pay the rest by a certain time, he is to become again liable for the entire amount. Such a declaration, or one similar to it, was regarded as unreasonable and of no legal force

Bastard (*mamzer*)
the issue of an adulterous, incestuous, or otherwise forbidden union

Benefit (*hăna'ah*)
indirect use of an article of food, such as use for sale or for fuel, as distinguished from the direct eating of it; or the deriving of any advantage or favor from another person

Betrothal (*ḳiddušin*)
see Espousal

Bitter water, ordeal of
prescribed for a wayward woman, i.e., a wife suspected by her husband of infidelity; cf. Num. 5:11 ff.

Come of age (*bogereṯ*)
a girl twelve and a half years and one day old

Commandment, negative or positive
a negative commandment in the Torah is one stated in negative terms, "thou shalt not"; a positive commandment is one stated in positive terms, "thou shalt"

Declaration, verbal
see Verbal declaration

Denar (*denarius*)
a silver or gold coin, the former worth $\frac{1}{24}$ of the latter

'Erusin
see Espousal

Espousal (*'erusin*)
or Betrothal (*ḳiddušin,* literally "consecration"); the formal undertaking between a man and a woman (or her parent, in case of a

minor female) to enter into the state of matrimony, which legally makes them man and wife, even though the marriage has not yet been consummated, and requires a formal divorce for its dissolution

Excision (*ḳareṯ*)

divine punishment, such as premature death, death without leaving any issue, or eradication of the soul in the world to come. Maimonides favors the third interpretation (see I, v, viii, 1)

Fine (*ḳĕnas*)

a monetary fine, imposed, for example, upon a man who seduces or violates a virgin

Flogging for disobedience (*maḳḳaṯ marduṯ,* literally "lashes of rebellion")

flogging prescribed by Rabbinic law, the number of lashes inflicted being at the discretion of the court, in contradistinction to the Biblical lashes which are limited to no more than thirty-nine

Geonim (singular *ga'on,* "Excellency")

the title borne by the heads of the Babylonian academies which flourished from the 7th to the 11th century

Geṭ

a legal document, usually a bill of divorcement, but also applied to a bill of ḥălişah and a bill of refusal

Ḥălişah (literally "drawing off")

the ceremony whereby a woman is released from levirate marriage (Deut. 25:5–10). A perfect ḥălişah is one preceded by no other act. An imperfect ḥălişah is one preceded by a geṭ or a verbal declaration, whether on the part of the levir and his sister-in-law themselves, or on the part of his brother or her co-wife

Intercourse, act of

a valid act of intercourse between a levir and his widowed sister-in-law is one that is preceded by no act other than his verbal declaration to her. A defective act of intercourse is one that is preceded by such an act, whether on the part of the levir and the sister-in-law themselves, or on the part of his brother or her co-wife

Iron sheep property (*niḳse ṣo'n barzel*)

property entrusted by one party to another (particularly by the wife to her husband) on condition that the trustee is to be responsible for any loss or damage thereto, regardless of the cause of such loss or damage

Israelite
a) a Jew, in contradistinction to a Gentile; b) a commoner who is neither a priest nor a Levite

'Issar (Latin *assarius,* later *as*)
a small Roman coin, worth 8 pĕruṭah, or 4 barleycorns of silver

Ḳaḇ
a measure of capacity equal to 4 *logˉ* or ⅙ of a *sĕ'ah*

Ḳĕnas
see Fine

Kĕṯubbah (literally "writ")
a) marriage contract specifying the mutual duties of husband and wife, including the amount of the wife's dowry and the financial obligations towards her assumed by the husband; b) the sums payable to the wife by the husband under this contract

Kĕṯubbah, statutory (*'iḳḳar ḳĕṯubbah*)
the minimum sum to which the wife is entitled. In Talmudic times it was two hundred zuz for a virgin, and one hundred zuz for a nonvirgin

Kĕṯubbah, supplementary amount of (*tosefeṯ ḳĕṯubbah*)
any amount settled upon the wife in addition to the statutory minimum

Ḳiddušin see Espousal

Ḳinnuy ("warning")
a husband's suspicion of his wife's infidelity, manifested by a warning on his part to her, "Do not seclude yourself with So-and-so"

Ḳinyan
see Symbolic act of barter

Kor
a measure of capacity equal to 30 *sĕ'ah;* a kor of land (*beṯ ḳor*) is an area in which a kor of seed can be sown, or 75,000 square cubits

Livelihood (*parnasah*)
an allotment given by the father out of his property to his daughter upon her marriage

Logˉ
a liquid measure equal to ¼ of a ḳaḇ, or the space occupied by 6 eggs

Ma'ămar
see Verbal declaration

Maiden (*na'ărah*)
: a girl between the ages of twelve years plus one day and twelve and a half years plus one day; heretofore she is regarded as a minor, thereafter as having come of age

Mĕzuzah
: literally "doorpost" (Deut. 6:9); a piece of parchment bearing the verses Deut. 6:4–9, 11:13–21, enclosed in a cylinder and fastened to the right-hand doorpost

Mĕlog̱ (literally "plucking") property
: property which belongs to the wife and of which the husband has only the usufruct, without any right to the principal or any responsibility for loss or deterioration

Mina (*maneh*)
: equal in value to 100 zuz or 100 denar

Minor
: a girl up to the age of twelve years, and a boy up to the age of thirteen

Mi'un
: *see* Refusal

Na'ărah
: *see* Maiden

Nathin (pl. Nethinim)
: a descendant of the Gibeonites who deceived Joshua and were condemned to be hewers of wood and drawers of water. See Josh. 9:3–27

Nik̲se ṣo'n barzel
: *see* Iron sheep property

Niśu'in
: *see* Wedding

Oath, informal (*šĕḇu'aṯ heseṯ,* literally "oath of persuasion")
: an oath administered to a defendant under a special enactment ascribed (B. Sheḇu 40b) to R. Naḥman. It is administered whenever, under the rules pertaining to oaths, the defendant, though denying a claim asserted against him with certainty, is not liable to a formal oath. It is of lesser solemnity than the formal oath, the party not being required to hold a sacred object, such as a Scroll of the Torah (hence the term "informal"), and its purpose is to persuade him to tell the truth (hence the term "of persuasion")

Parnasah
: *see* Livelihood

Pĕruṭah
the smallest copper coin, equal to ⅛ of an *'issar*

Priest (*ḳohen*)
a descendant in the male line of Aaron, the brother of Moses, the first High Priest. Such a descendant may not marry a divorcée

Refusal (*mi'un*)
if an orphaned girl is given in marriage by her mother or brother, she may leave her husband with a mere declaration of refusal, and no geṭ is necessary

Sages
scholars of the Talmudic period, the expounders of the Jewish law, and the bearers of its traditions as recorded in the Talmud

Scribal law
post-Biblical law enacted by the Sages

Sĕ'ah
measure of capacity equal to 6 *ḳaḇ*

Seducer and Violator
the former persuades a virgin to submit to him, the latter compels her by threat of violence

Selaʿ
a coin or weight equal to 2 denar

Soṭah
see Wayward woman

Symbolic act of barter (*ḳinyan*)
a formality of acquisition of an object, or of confirmation of an agreement, executed by the handing of a kerchief or any other article by one of the parties to the other, or by the witnesses to the agreement, thus symbolizing that the object itself has been transferred or the obligation assumed

Tithe
there were three kinds of tithes: the first was given to the Levite in each of the first six years of the Sabbatical cycle; the second was separated in the first, second, fourth, and fifth years of the cycle and was consumed by the owners in Jerusalem, or was redeemed with money, which was then spent in Jerusalem; the third was the poor man's tithe, and was given to the poor in the third and sixth years of the cycle

Ṭumṭum
a person of indeterminate sex

Verbal declaration (*ma'ămar*)

a declaration of intent to marry, made by the levir to his widowed sister-in-law; it alone does not complete the levirate marriage. A valid declaration is one that is preceded by no other act, and is followed by no act other than consummation of the marriage. A defective declaration is one that is preceded or followed by any act other than consummation, whether the act or acts affect the sister-in-law herself or her co-wife

Violator

see Seducer and Violator

Warning

see Ḳinnuy

Wayward woman (*soṭah*)

a wife suspected by her husband of infidelity

Wedding (*niśu'in*)

the final stage of marriage following espousal or betrothal, whereby the bride is conducted to the groom's home, and is, after appropriate wedding ceremonies, surrendered into his keeping

Wife suspected of infidelity

see Wayward woman

"Within the time needed to make an utterance"

the time it takes a disciple to greet his master, i.e., the time it takes to say, "Peace be unto you, Rabbi" (see B. Naz 20b)

Yĕḇamah

a widowed sister-in-law subject to levirate marriage

Yibbum

the institution of levirate marriage

Zuz

a coin equal in value to a denar

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